IMPERIAL NATURALIZATION

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CANADIAN NATURALIZATION ACTS

MINUTES OF COLONIAL AND IMPERIAL CONFERENCES
AND OF DOCUMENTS SUBMITTED THEREAT

OTTAWA
GOVERNMENT PRINTING BUREAU
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CONTENTS

LETTER OF TRANSMISSION.

To the Honourable
WILLIAM JAMES ROCHE, M.D., M.P.,
Secretary of State of Canada.

SIR,—I have the honour to transmit, herewith, as directed, copies of the Imperial and Canadian Naturalization Acts, the Minutes of the Colonial and Imperial Conferences relating to naturalization, the documents submitted to these conferences, the reports of the Imperial Interdepartmental Committee on Naturalization, and such other documents as may be of assistance in discussing the Draft Imperial Naturalization Act at present under consideration.

I consider it advisable to submit for your consideration some observations upon the development of the subject to its present position, upon criticisms of the Bill, upon other features of the Naturalization Laws of Canada and upon the limitations of Parliament to deal with the subject which may also assist in the consideration of the Bill.

Modern history of the subject of naturalization commences with a Report of a Royal Commission composed of Lord Bramwell, Sir Montague Bernard, Sir William Harcourt and Sir Alexander Cockburn, in the year 1869. (1869, pp. xi., xv., Nationality, 214.) It was on the recommendation of that Report that the Imperial Act of 1870 was introduced and enacted.

In turn, the Canadian Act of 1881, (44 Victoria, Cap. 13), which is based upon the Imperial Act of 1870, was passed, now amended and consolidated as R.S.C., Cap. 77.

The next development of the subject was in a Report of an Interdepartmental Committee appointed by the Secretary of State for the Home Department in 1899, (1901, Cd. 723),[1] to report upon the doubts and difficulties which have arisen in connection with the interpretation and administration of the Acts relating to naturalization, and to advise whether legislation for the amending of those Acts is desirable, and if so, what steps and direction such legislation should take. This Committee reported exhaustively on the anomalies of the law

[1] See page 46.

as it then and still exists with respect to naturalization and nationality, and a number of amendments were suggested. A copy of the Report was forwarded to the then Governor-General for consideration, and it was made the subject of a Minute of Council dated 12th April, 1902, wherein some of the principles of the Report were approved and others criticized. (Confidential Report app. xxvi., pp. 509.)[1] These suggestions were considered by the Departmental Committee, and a subsidiary Report was made dated 18th June, 1902, (Confidential Report app. xxvi., pp. 510-511.)[2]

The subject was next taken up by the Colonial Conference of 1902, on the motion of the Governments of the Cape and of Natal. The discussion at this Conference related to the uniformity of the laws of all the Colonies with respect to naturalization, and the state of the law which results in aliens on obtaining naturalization in the various colonies being considered British subjects only while in such Colonies, and no resolution was reached. (Confidential Report, pp. 115-117.)[3]

Immediately prior to the Imperial Conference, 1907, and with a view to discussion thereon a copy of a draft Imperial Bill was forwarded by circular letter dated 14th December, 1906, (Ch. 3524, pp. 92, 127-135)[4] by Lord Elgin, the then Secretary of State for the Colonies, to the Governors of the various colonies. This Bill[5] was discussed with some considerable detail by the Imperial Conference. An objection thereto was raised by General Botha, some points of which are as follows, (Canadian Reprint, p. 541)[6]: (1) The procedure laid down in Section 26 of the Bill, to confer upon an alien naturalized in a British possession outside the United Kingdom the status of a British subject, being by Imperial Act, should apply to every portion of His Majesty's Dominions, and that it was not desirable that legislation should be imposed upon a self-governing colony except by the Parliament of such colony; (2) The Bill as drafted applies to aliens of non-European birth or descent, and in some self-governing colonies local naturalization is granted only to Europeans. (3) The Bill provides for residence for not less than five years within His Majesty's Dominions. To this it was objected that the last year immediately preceding the application, the place of residence should be within the authority granting the naturalization. (4) As the Bill provides for an absolute discretion in the Secretary of State in the issue of Certificates of Naturalization, it should be made imperative that no Certificate shall issue to a person who has been convicted of a crime. The subject was dealt with at

[1]See page 76. [2]See page 78. [3]See page 71. [4]See page 81.
[5]See page 92. [6]See page 131.

two sittings of the Conference, and the following Resolution was adopted:—

"That with a view to attain uniformity so far as practic-
"able, an inquiry should be held further to consider the ques-
"tion of naturalization, and in particular to consider how far
"and under what conditions naturalization in one part of His
"Majesty's Dominions should be effective in other parts of
"those Dominions, a subsidiary Conference to be held, if
"necessary, under the terms of the Resolution adopted by this
"Conference on the 20th of April last."[1]

The subsidiary Conference referred to in this Resolution does not appear to have been held, but the Bill was referred to a Committee of officials of the Home and Colonial Offices, who reported on 24th July, 1908, (Cd. 5273, pp. 140-149),[2] and suggested some amendments to the Bill. In this Report, the objections raised by General Botha were considered. (1) With reference to the question of interference with the legislative powers of the self-governing Dominions, it was observed that a Certificate of Naturalization to have effect throughout the Empire could be only under a Statute of the Imperial Parliament, and that a colonial legislature can only legislate for its own territory, and the operation of the laws of the colony were restricted to the boundaries of that colony. (I may here interpolate that this answer is not in point. Undoubtedly, law to have extra-territorial effect must have Imperial authorization, and this extended power of legislation has been conferred by several Imperial Statutes, for instance, the Copyright Act of 1886, and the Extradition Act of 1870. I may, however, add that this objection cannot be urged against the amended draft Bill.) (2) The Report points out an answer to the objection with respect to persons of non-European race, showing that the measure has very little bearing on the coloured race question, it being perfectly clear that naturalized persons cannot by naturalization acquire any greater or other rights than those possessed by native born British subjects, that any colonial law affecting the coloured races which applies to natural born British subjects must apply and continue to apply to naturalized persons, and amendments are suggested to overcome this objection. (3) The draft Bill is now unobjectionable in this respect. (4) It was also pointed out that the absolute discretion of the Secretary of State gave no adequate provision for the exclusion of undesirable persons from naturalization, and that as a matter of administrative practice evidence of good character is always required, and the insertion of an amendment embodying this practice would meet the objection.

[1]See page 129. [2]See page 139.

The amended Bill came before the Imperial Conference of 1911, upon Resolution of the Governments of Australia, New Zealand and South Africa, and the following main principles which should underlie any legislation on the subject were unanimously adopted. (Precis of Proceedings, Imperial Conference, 1911, pp. 54, 58):[1]

"The Imperial Act should be so framed as to enable each "self-governing Dominion to adopt it.

"(1) Imperial nationality should be world wide and uni- "form, each Dominion being left free to grant local nation- "ality on such terms as its legislature should think fit.

"(2) The Mother Country finds it necessary to maintain "five years as the qualifying period. This is a safeguard to "the Dominions as well as to her, but five years anywhere in "the Empire should be as good as five years in the United "Kingdom.

"(3) The grant of Imperial nationality is in every case "discretionary, and this discretion should be exercised by "those responsible in the area in which the applicant has "spent the last twelve months.

"(4) The Imperial Act would not apply to the self- "governing Dominions unless adopted by them.

"(5) Nothing now proposed would affect the validity and "effectiveness of local laws regulating immigration or the "like, or differentiating between classes of British subjects."

The draft Bill,[2] amended in conformity with these principles, is now submitted for the approval of the Governments of the various Dominions.

In the public discussion which has developed upon the subject is has been suggested that:—

I. From an early period Canada exercised the right to confer complete naturalization, that all her actions in this regard were approved and assented to by the Sovereign on the advice of the Colonial Office, and that the only basis of her authority was the grant of a right to make laws "for the peace, order and good government of Canada."

II. The only change necessary to effect complete naturalization by virtue of Canadian Statute is the recognition by the United Kingdom of such legislation and an Imperial Statute is not necessary.

III. There is a distinction between status (such as naturalization) and the effect of status, and authority having been con-

[1]See pages 201-202. [2]See page 163.

ferred on the Parliament of Canada to legislate respecting "Naturalization and Aliens" and thereby to create the status, the end desired "Imperial Naturalization", so far as Canada is concerned, may be attained by eliminating from Section 14 of the Canadian Naturalization Act the words "in Canada."

These suggestions are all worthy of consideration. They all attack the principle of the Bill and I submit seriatim some observations thereon.

I. For a complete consideration of this assertion it is necessary to consider the legislation prior to Confederation of the Provinces which make up Canada and the Dominion legislation since that time. I shall, however, limit this phase of the subject to a consideration of the legislation of the Province of Upper Canada, the Provinces of Canada and the Dominion, which is, I submit, sufficient to shew the error of the suggestion under consideration.

The first Public Statute of the Province of Upper Canada relating to Naturalization is 9 George IV, cap. 21. The preamble of this Statute is as follows:

"Whereas it is expedient to remove by law doubts that may "have arisen as to the civil rights and titles to real estate of "some of the persons hereinafter mentioned, and to provide by "some general law for the naturalization of such persons not "being by law entitled to be regarded as natural born subjects "of His Majesty, as are actually domiciled in this Province."

The first clause enacts that persons who had received grants from the Crown or held office and all persons who had their settled place of abode in the Province before 1820 and were still resident therein "shall be and are hereby admitted and con-"firmed in all the privileges of British birth, and shall be "deemed, adjudged and taken to be, and so far as respects their "capacity at any time heretofore, to take, hold, possess, enjoy, "claim, recover, convey, devise, impart or transmit any real "estate in His Majesty's dominions, or any right, title, privi-"lege or appurtenance thereto, or any interest therein, to have "been natural born subjects of His Majesty, to all intents, "constructions and purposes whatsoever, as if they and every "of them had been born in His Majesty's United Kingdom of "Great Britain and Ireland."

To take advantage of this Act it was necessary to take the oath therein provided within three years from the passing of the Act. By 1 Wm. VI., Cap. 7, the time for taking the oath was extended to 16th March, 1835, and by 2 Victoria, Cap. 20, the time was again extended to two years from the 11th of May, 1839.

The next Statute on the subject is 4-5 Victoria, Cap. 7. The preamble of this Statute is as follows:

"Whereas it is desirable to provide by some general law "for the naturalization of certain classes of persons who are "not natural born subjects of Her Majesty, but have actually "become domiciled in this Province," and it is enacted that: "all aliens who were actually residing within this Province "on the tenth day of February, in the year of Our Lord "one thousand eight hundred and forty-one, and who were "so resident continually for the seven years next before that "day, or who shall have been continually resident for seven "years from the said day or from their first residence in this "Province before that day, shall be deemed and taken to be "natural born subjects of Her Majesty, to all intents and pur- "poses whatsoever; Provided always that residence within the "late Province of Lower Canada, or residence within the late "Province of Upper Canada shall be deemed residence within "this Province for the purposes of this Act."

In 1845 An Act to make further provision regarding Aliens was passed, (9 Victoria, Cap. 107). The Statute was reserved for the signification of Her Majesty's pleasure, 29th March, 1845; the Royal Assent was given on the 30th of June, and Proclamation was made thereof on the 2nd of August, 1845. The preamble is:—

"Whereas it is expedient that His Excellency the Governor "General of this Province, by and with the advice of the Exe- "cutive Council thereof, should be enabled to grant to aliens "the rights and capacities of natural born British subjects, "under such regulations and exceptions as are hereinafter pro- "vided," etc.

Section I is as follows:—

"That upon obtaining the certificate and taking the oath or "affirmation hereinafter prescribed, every alien now residing in, "or who shall hereafter come to reside in any part of this Pro- "vince, with intent to settle therein, (although he may not have "been domiciled in this Province for a period of more than five "years) shall enjoy all the rights and capacities which a natural "born subject of Her Majesty can enjoy or transmit, except "such rights and capacities (if any) as shall be specially "excepted in, and by the certificate to be granted in manner "hereinafter mentioned: Provided always, that in special cases, "requiring the immediate interference of the Governor in "Council, it shall and may be lawful for the said Governor in "Council to grant the certificate hereinafter prescribed in "favour of any particular individual or individuals presenting "the memorial hereinafter mentioned, although such individual

"or individuals shall not have been domiciled in this Province "for a period of five years."

In 1847 there was passed "An Act to Extend the time for taking the Oath and making the Declaration required of persons Naturalized in this Province," 10-11 Vic., Cap. 112. This was reserved for the signification of Her Majesty's pleasure, 28th July, 1847; the Royal Assent was given on the 30th October, 1847, and the Proclamation thereof was made on the 11th of December, 1847. This Statute recited 4 & 5 Vic., Cap. 7, and extended the time for taking the Oath.

The next Statute bearing upon the subject is the Imperial Act of 1847, 10-11 Victoria, Cap. 83, which is as follows:—

"'Whereas by divers Acts, Statutes, or Ordinances enacted "'by the Legislatures of divers of Her Majesty's Colonies or "'Possessions abroad Provision hath been made for imparting "'to divers Aliens there resident the Privileges or some of the "'Privileges of Naturalization, to be exercised and enjoyed "'within the respective Limits of such Colonies and Possessions "'respectively: And whereas Doubts have arisen as to the "'Competency of the said Legislatures to enact any such Laws, "'Statutes, or Ordinances, and as to the Validity of the same "'when so enacted, and it is expedient that such Doubts be "'removed:' Be it therefore and it is hereby declared and "enacted by the Queen's most Excellent Majesty, by and with "the Advice and Consent of the Lords Spiritual and Temporal, "and Commons, in this present Parliament assembled, and by "the Authority of the same, That all Acts, Statutes, and Ordi- "nances heretofore made and enacted by the Legislatures of any "of Her Majesty's Colonies and Possessions abroad for impart- "ing to any Person or Persons the Privileges or any of the "Privileges of Naturalization, to be by such Person or Persons "exercised and enjoyed within the respective Limits of such "Colonies or Possessions respectively, shall within such Limits "have and be taken and reputed to have had from the Time of "the Enactment thereof respectively all such and the same "Force and Effect as doth by Law belong to any other Law, "Statute, or Ordinance made or enacted by any such respective "Legislatures.

"II. And be it and it is hereby enacted and declared, That "all Laws, Statutes, and Ordinances which shall hereafter be "made and enacted by the Legislatures of any of Her Majesty's "Colonies or Possessions abroad for imparting to any Person or "Persons the Privileges or any of the Privileges of Naturaliza- "tion, to be by any such Person or Persons exercised and "enjoyed within the Limits of any such Colonies and Posses- "sions respectively, shall within such Limits have the Force and "Authority of Law, any Law, Statute, or Usage to the con- "trary in anywise notwithstanding: Provided nevertheless, that

"all such Laws, Statutes, and Ordinances shall be made and "enacted in such Manner and Form, and subject to and in "conformity with all such Rules as now are or hereafter shall "be in force in respect of other Laws, Statutes, or Ordinances "enacted or to be enacted by any such Legislatures respectively, "and shall and may be confirmed or disallowed by Her Majesty "in such and the same Manner, and subject to the same Rules "and Regulations as extend or as shall hereafter extend to the "Confirmation or Disallowance of any other such Laws, Sta- "tutes, or Ordinances.

"III. 'And whereas a certain Act was made and enacted in "'the Seventh and Eighth Year of the Reign of Her present "'Majesty, intituled An Act to amend the Laws relating to "'Aliens: And whereas Doubts have arisen whether the said "'recited Act of the Seventh and Eighth Year of Her Majesty's "'Reign extends to and is in force in Her Majesty's Colonies "'or Possessions abroad;' now it is hereby further enacted and "declared, That the said recited Act of the Seventh and Eighth "Year of Her Majesty's Reign, or any Part of it, doth not "extend to the said Colonies or Possessions, or to any of them.

"IV. And be it enacted, That this Act may be amended or "repealed by any other Act of this present Session of Parlia- "ment."

The necessity for this legislation and the views held by the Home Government respecting it are set out in a circular despatch from Earl Grey, then Colonial Secretary to Lord Elgin, as follows:—

"Downing Street,
"25th September, 1847.

"My Lord,—In the last Session of Parliament an Act was "passed 'for the Naturalization of Aliens.' 10th & 11th Vict., "ch. 83. I herewith enclose a Copy of it.

"The Preamble of that Act explains briefly the circum- "stances in which it originated. In almost all the British "Colonies Laws had, of late years, been enacted, the object of "which was to impart the privileges of Natural-born British "Subjects to Aliens inhabiting the Colonies in which those "Enactments were made. On referring those Acts to the suc- "cessive Law Officers of the Crown, it appeared from their "answers to such references, to be a matter of great doubt "whether they were valid and effectual for their purpose, and "whether the Queen could properly be advised to confirm them. "The principal ground of this doubt was the existence in the "British Statute Book of various General Acts respecting the "Naturalization of Aliens, some of which Acts of Parliament, "and especially the Statute 7th & 8th Vict., ch. 66, were supposed "by Her Majesty's Legal Advisers to extend to, and to be in "force throughout the British Colonies. But the Colonial Acts "in question being found to be in several respects at variance

"with, and repugnant to those Acts of Parliament, it was inferred that such Colonial Enactments were null and void either in whole or in part.

"To obviate a conclusion replete with so much inconvenience, and recommended by no assignable advantage, Her Majesty's Government recommended to Parliament in their last Session, the passing of the Act which I now enclose.

"The result of that Act is First, to give validity to all Colonial Naturalization Acts formerly passed and to declare that they shall be taken to have been valid from the time of their Enactment. Secondly, the Act then proceeds to provide that all Naturalization Acts which shall hereafter be passed by any Colonial Legislature shall, within the limits of the Colony have the force of Law any Law or Statute to the contrary notwithstanding. But Thirdly, both the retrospective and prospective operation of the 10th & 11th Vict., ch. 83, is confined to Colonial Acts which authorize the enjoyment of the privileges of Naturalization within the limits of the Colony within which such Act shall have been, or shall be, made. It also declares, Fourthly, that all such Naturalization Laws shall be subject to the Rules which regulate the Enactment and disallowance of Colonial Laws on any other subject. And, Finally, it declares that the 7th & 8th Vict., ch. 66, does not extend to the British Colonies.

"The result of these Enactments will be to remove all doubts which have hitherto prevented the confirmation of various Naturalization Acts of the different British Colonies, and to ascertain the competency of the Colonial Legislatures to confer on Aliens the privileges of Natural-born British subjects, if the exercise of those privileges be limited to the particular Colony in which the Enactment may be made.

"It may obviate a possible misconception to add that inasmuch as that part of the Navigation Act which confines to British Subjects the ownership of British Registered Shipping is not repealed, but continues in full force, the disability of an Alien naturalized under a Colonial Act to own such Shipping is not removed by the accompanying Statute 10th & 11th Vict., ch. 83. It would, indeed, be at variance with the terms of that Act to claim such a privilege in pursuance of it, inasmuch as the privileges which it authorizes the Colonial Legislatures to confer, are expressly restricted to the limits of the Colony within which they may so be conferred."

"I have the honour to be,
"My Lord,
"Your obedient humble servant,
"GREY."

"The Earl of Elgin and Kincardine."

Mr. Piggott in his book on Naturalization at page 227 refers to this Statute as follows:—

"Although the Act was, as it professed to be, a validating "Act, and was couched in very broad terms, yet it was so drawn "as to be at the same time an invalidating Act. It laid down "expressly what the provisions of the colonial ordinances must "be in order that the validation should apply to them: if there "were any which did not satisfy this test, they were outside the "Act, and must have been invalidated."

"The test was, that the privileges of naturalization should "profess to have been granted for exercise and enjoyment within "the limits of the Colony alone. It is not clear what the doubts "were which led to the passing of the Act; they may have been, "as the preamble recites, merely as to whether Colonial Legis- "latures had any power of naturalization at all—if so, it had "taken a long time for the doubts to arise; or, it may be, that "some Colonies had assumed a wider power, and had granted or "professed to grant an unrestricted naturalization, conferring "British nationality generally—though of this there do not "appear to be any traces; or, it may be, that as in later times, "the limited effect of the grants which had been made were not "understood by the grantees, and claims to be British subjects "beyond the granting Colony were made, which it was thought "advisable to stop for the future by express declaration of "Parliament."

"Nevertheless it is important to realise what the doubt really "was; why legislation, which appears to be essentially local, "should have been thought to be *ultra vires* the Colonial Parlia- "ments; for on this depends the understanding of the real "meaning of the provision of the law, which was not only "applied in 1847 to the validation of then existing colonial "legislation, but was enacted in identical terms for the future, "and was repeated, with verbal alterations only, in 1870."

"The recital in the preamble shows that the colonial legis- "lation had apparently kept within the principle which the "Imperial Parliament sanctioned for the future. There does "not appear to have been any patent evasion of constitutional "principles the doubt which existed, and which was resolved in "1847, must have been latent, and it evidently corresponds "with the necessity, since and still recognised, for the Parlia- "mentary sanction to colonial naturalization, even hedged in "with limitations as it is."

Mr. Piggott in these comments appears to have been unaware of the legislation for the Province of Upper Canada which undoubtedly transcended the limitations of colonial legislation. Nevertheless his other remarks upon the Statute are quite pertinent to the subject under discussion. I should like also to point out what appears to me to be the origin and true explanation of the limitation of the third paragraph of section 7 of the Act of 1870 whereby the naturalization conferred under it is in United Kingdom. Section 3 of the Act of 1847 expressly

states that the provisions of the Naturalization Act of 1844 are not to extend to the Colonies and possessions. Section 2 provides that the naturalization of the Colonies is to be limited to the respective Colonies. This appears to me to be a deliberate arrangement of the subject so that each portion of the Empire would for itself deal with the subject of naturalization. Foreign travel and change of domicile from place to place was not as frequent as since the introduction of railroads and steamships. At the time of the passing of the Act of 1847 it was, no doubt, thought that naturalization would likely be effected at the place of permanent residence and that there was no necessity of its recognition in various parts of the Empire. I shall again refer to this point in discussing Section 16 of the Act of 1870.

12 Victoria, Cap. 197 was passed on the 30th of May, 1849, and reserved for the signification of Her Majesty's pleasure thereon. On the 6th of October, 1849, the Statute received Her Majesty's Assent in Privy Council, and on the 23rd of November, 1849, the Assent was proclaimed in Canada.

9 Vic., Cap. 107 was repealed reserving acquired rights.

The second section is as follows, in part:

"And be it enacted, that all Aliens who had their settled "place of abode in either of the late Provinces of Lower or "Upper Canada before the Tenth day of February, in the year "of Our Lord one thousand eight hundred and forty-one, and "who are still resident in this Province, shall be and are hereby "admitted to and confirmed in all the Privileges of British birth, "and shall be deemed, adjuged and taken to be and to have been "natural born subjects of Her Majesty to all intents and pur- "poses whatsoever, as if they and every of them had been born "in this Province, and that the children or more remote descen- "dants of every such person who may be dead, shall be and are "hereby admitted to the same privileges which such parents or "ancestors, if living, could claim under this Act."

By Section III a similar provision was made with respect to aliens generally who theretofore or thereafter had resided seven years in the Province.

Section XIII is as follows:—

"Provided always and it is hereby declared, that the privi- "leges of Naturalization imparted by this Act to the several "classes of persons herein mentioned, are imparted to such per- "sons respectively on the respective terms and conditions herein "stated and set forth, and to be by such persons exercised and "enjoyed within the limits of this Province, according to the "true intent and meaning of an Act passed in the Parliament of "the United Kingdom of Great Britain and Ireland, in the

"Tenth and Eleventh Years of Her Majesty's Reign, and inti-
"tuled *An Act for the Naturalization of Aliens.*"

It is evident that complete naturalization could not be conferred under this Act. Its provisions are in strict conformity with the Imperial Act of 1847 and naturalization conferred was limited to Canada.

By 18 Vic., Cap. 6, the period of residence required for naturalization was reduced to five years.

The Statute was further amended by 22 Victoria, Cap. 1, and the period of residence required reduced to three years.

The legislation was carried forward in R.S.C., 1859, Chapter 8. Section 1 of this Statute is as follows:—

"Every Alien residing in any part of this Province, imme-
"diately before the eighteenth day of January, 1849, or who
"at any time thereafter came or comes to reside in any part of
"this Province with intent to settle therein, and who after a
"continued residence therein for a period of three years or
"upwards, has taken the oaths or affirmations of residence and
"allegiance (for the oath or affirmation of residence only if a
"female) and procured the same to be filed of record as here-
"inafter prescribed, so as to entitle him or her to a certificate
"of Naturalization as hereinafter provided, shall thenceforth
"enjoy and may transmit all the rights and capacities which a
"natural-born subject of Her Majesty can enjoy or transmit.
"12 V., c. 197, s. 4, and 22 V., c. 1."

And section 10 is as follows:—

"10. The privileges of Naturalization imparted by this Act
"to the several classes of persons herein mentioned, are imparted
"to such persons respectively on the terms and conditions herein
"set forth, and are to be by such persons exercised and enjoyed
"within the limits of this Province, according to the true intent
"and meaning of an Act passed in the Parliament of the United
"Kingdom of Great Britain and Ireland, in the Tenth and
"Eleventh Years of Her Majesty's Reign, and intituled *An Act*
"*for the Naturalization of Aliens.*"

This again is a strict limitation of the operation of the Act to the territorial limits of Canada, and complete naturalization was not thereby conferred.

There appears to have been no further legislation on the subject until the year 1868, when 31 Victoria, Cap. 66, an Act respecting Aliens and Naturalization, was passed. Section 3 of which is as follows:—

"Every Alien (not being a woman married to a natural-born
"or naturalized British subject) now residing in, or who shall
"hereafter come to reside in any part of this Dominion, with

"intent to settle therein, and who after a continued residence "therein for a period of three years or upwards, has taken the "oaths or affirmations of residence and allegiance, and procured "the same to be filed of record as hereinafter prescribed, so as to "entitle him or her to a Certificate of Naturalization as herein- "after provided, shall thenceforth enjoy and may transmit all "the rights and capacities which a natural born subject of Her "Majesty can enjoy or transmit."

And Section 10 as follows:—

"The privileges of Naturalization imparted by this Act to the "several classes of persons herein mentioned, are imparted to "such persons respectively on the terms and conditions herein "set forth, and are to be by such persons exercised and enjoyed "according to the true intent and meaning of an Act passed in "the Parliament of the United Kingdom of Great Britain and "Ireland in the session held in the tenth and eleventh years of "Her Majesty's Reign, and intituled: *An Act for the Natural-* "*ization of Aliens.*"

Here again is the limitation to Canada.

The Act of 1868 was amended in 1871 by 34 Vic., C. 22, which provided that aliens who prior to 1st January, 1868, had taken the oath of allegiance and residence in that Province of the Dominion in which they then resided, shall be admitted to all the rights and privileges of a natural-born British subject conferred by the Act of 1868.

By 36 Vic., Cap. 36, the Acts of 1868 and 1871 were extended to British Columbia.

The Imperial Statute of 1847, 10-11 Vic., Ch. 83, was repealed by the Act of 1870. I beg to point out particularly Section 16 which continues the provisions of Section 2 of the Act of 1847 and limits to each Colony the Naturalization Statutes thereof. Special attention should also be given to Section 7 of this Act, the third paragraph of which is as follows:—

"An alien to whom a certificate of naturalization is granted "shall in the United Kingdom be entitled to all political and "other rights, powers and privileges, and be subject to all obli- "gations, to which a natural-born British subject is entitled or "subject in the United Kingdom, with this qualification, that "he shall not, when within the limits of the foreign state of "which he was a subject previously to obtaining his certificate "of naturalization, be deemed to be a British subject unless he "has ceased to be a subject of that state in pursuance of the laws "thereof, or in pursuance of a treaty to that effect."

Mr. Piggott in his book on Naturalization has subjected this Section to very considerable criticism. It appears to me, how-

ever, that he tries to torture the Section to give it various meanings which were never intended it should bear. The plain and simple explanation is that which I have given of the corresponding Section of the Act of 1847, viz., that in the United Kingdom aliens naturalized there were to be deemed to be British subjects, and it appears to follow too that they were deemed within the United Kingdom to be British subjects whether they were actually within the United Kingdom at the time. However, a precise construction of the Section does not appear to be necessary as it appears to me that the main purpose of wording the Section as it was, is to limit the operation of the naturalization laws of the United Kingdom to the United Kingdom alone and of the Colonies to their respective Colonies.

This is made evident from the plain meaning of Section 16 of the Act of 1870, which is as follows:—

"All laws, statutes and ordinances which may be duly made "by the Legislature of any British Possession for imparting to "any person the privileges or any of the privileges of natural- "ization, to be enjoyed by such person within the limits of such "Possession, shall within such limits have the authority of law "but shall be subject to be confirmed or disallowed by Her "Majesty in the same manner and subject to the same rules in "and subject to which Her Majesty has power to confirm or "disallow any other laws, statutes or ordinances in that Posses- "sion."

The next Canadian legislation is that of the year 1881 which is now consolidated as Chapter 77 of the Revised Statutes. Amendments were made as follows: "2 Ed. VII., 23; 3 Ed. "VII,. 38; 4 Ed. VII., 25; and 4-5 Ed. VII., 25." None of these amendments touch the question under consideration and they are all consolidated.

Since 1906 the only amendment is that of 6-7 Ed. VII, 31, which provides for naturalization in Canada under R.S.C., Cap. 77, of persons who have been naturalized in the United Kingdom or another Colony, and this Naturalization may be effected after a residence of three months.

There are despatches prior to Confederation and during the agitation of Naturalized Germans from 1872-1878, Orders-in-Council and addresses of Parliament which shew clearly the views held by the Home Government and the Government of Canada respecting the limitations of the Dominion in Naturalization legislation, and I take the liberty of quoting at length from them.

"CERTIFICATE OF NATURALIZATION.

"Circular, 73.
"Canada.

"Downing Street, 28th July, 1863.

"My Lord,

"My attention has been called by the Secretary of State for "Foreign Affairs to the inconvenience which is frequently "experienced in cases in which Foreigners naturalized in "British Colonies claim British protection from Her Majesty's "Representatives abroad.

"I have pointed out to Earl Russell that, under the provi- "sions of the Imperial Act, 10 and 11 Victoria, Cap. 83, the "effect of Colonial Naturalization is confined exclusively to the "Colony in which the Alien may reside, and that when such "Aliens pass beyond the limits of that Colony they lose all "claim to be considered for any purpose whatever as British "subjects. But in order to insure that this is distinctly under- "stood by the persons naturalized, it is advisable that all Certi- "ficates of Colonial Naturalization shall bear on their face an "unequivocal announcement of their purely local character. "This is, I think, in most instances already the case. But if "it should not be so in the Colony under your Government, I "should wish you to take steps in order to cause the requisite "additions to be made to the form of Certificate.

"I have, etc.,

(Signed) "NEWCASTLE."

"No. 62.

Quebec, April 22nd, 1864.

"His Grace
"The Duke of Newcastle.

"My Lord Duke,

"I have the honour to inform Your Grace that the Certifi- "cates of Naturalization granted to Aliens in Canada contain "on the face of them an announcement that the rights conferred "by them are exclusively confined to this Province.

"It was not therefore necessary to take any steps in reference "to this matter under the directions contained in your circular "despatch of July 28th, 1863.

"I have, etc.,

(Signed) "MONCK."

ADDRESS OF PARLIAMENT PASSED 21st APRIL, 1873.

"The Resolution adopted in Committee of the Whole on the "subject of the disadvantages under which Naturalized Ger- "mans suffer, were reported, read a second time, and agreed to, "and are as follows:—

"1. Resolved, That under the existing law of Great Britain, "persons of alien birth, naturalized in and under the laws of "the Dominion of Canada, acquire no rights and privileges as "British subjects, beyond the boundaries of the Dominion.

"2. Resolved, That this is regarded as a great hardship and "grievance by naturalized Foreigners who have become subjects "of Her Majesty in Canada, and who justly claim that after "being legally naturalized, they should be everywhere recogn- "ized as British subjects.

"3. Resolved, that by an Act passed by the Imperial Par- "liament in the 33rd year of Her Majesty's reign, entitled "'Naturalization Act of 1870,' it is provided that Great Britain "will thereafter recognize and protect all persons legally "naturalized as British subjects in any part of the world, pro- "vided they ceased by the laws of their native state to be sub- "jects thereof on changing their allegiance, or when a treaty "has been made between Great Britain and the said state to "that effect.

"4. Resolved, That under the provisions of the Act afore- "said, such a Treaty was negotiated between Great Britain and "the United States in the year of Our Lord 1871, and a further "and supplemental Treaty in the following year, 1872.

"5. Resolved, That an humble Address be presented to Her "Majesty setting forth the aforesaid grievance and praying "that Her Majesty will be graciously pleased to take such steps "as may be necessary for the redress of the same, by the nego- "tiation of Naturalization Treaties between Great Britain and "the German and other foreign states, so that legally natural- "ized Foreigners in Canada may not hereafter be subjected to "the disabilities of a divided allegiance, but be entitled to all "the rights, privileges and protection of British subjects in "every part of the world and in as full a measure as if they "had been subjects of Great Britain by birth.

"On motion of Mr. Young (Waterloo) the said Resolution "for an Address to Her Majesty the Queen was referred to a "Select Committee, composed of Mr. Young (Waterloo), the "Right Hon. Sir John A. Macdonald, and Messrs. Mackenzie, "Holton and Fournier.

"Mr. Young (Waterloo), from the said Committee, then "reported the draft of an Address, and the same being read a "second time, was agreed to, and is as follows:—

"To the Queen's Most Excellent Majesty:

"MOST GRACIOUS SOVEREIGN:

"We Your Majesty's most dutiful and loyal subjects, the "Commons of the Dominion of Canada, in Parliament "assembled, humbly approach Your Majesty for the pur- "pose of representing:

"That under the existing Law, persons of alien birth, "naturalized in and under the laws of the Dominion of "Canada, acquire no rights and privileges as British sub- "jects beyond the boundaries of the Dominion.

"That this is regarded as a great hardship and grievance "by naturalized Foreigners, who have become subjects of "Your Majesty in Canada, who justly claim that after "being legally naturalized, they should be everywhere re- "cognized as British subjects.

"That by an Act passed by the Imperial Parliament in "the 33rd year of Your Majesty's reign, entitled 'The "Naturalization Act of 1870, it is provided that Great "Britain will thereafter recognize and protect all persons "legally naturalized as British subjects in any part of the "world, provided they cease by the laws of their native "State to be subjects thereof on changing their allegiance, "or when a treaty has been made between Great Britain and "the said State to that effect.

"That under the provisions of the Act aforesaid such a "treaty was negotiated between Great Britain and the "United States, in the year of Our Lord 1871, and a further "and supplemental treaty in the following year, 1872.

"We therefore humbly pray that Your Majesty will be "graciously pleased to take such steps as may be necessary "for the redress of the grievance above mentioned by the "negotiation of Naturalization Treaties between Great "Britain and the German and other Foreign States, so that "legally Naturalized Foreigners in Canada may not here- "after be subjected to the disabilities of a divided alle- "giance, but be entitled to all the rights, privileges and pro- "tection of British subjects in every part of the world, and "in as full a measure as if they had been subjects of Great "Britain by birth.

"Ordered, That the said Address be engrossed."

EXTRACT *from a letter from the Foreign Office to the Colonial Office dated 7th August 1873.*

"Lord Granville believes that the chief points for considera- "tion in the communications from the Canadian Government "are:—

"1. The protection accorded to aliens naturalized in the "Dominion when travelling in Foreign Countries.

"2. The Extension of Imperial Naturalization to the Colo-
"nies.

"Upon the first point much misapprehension appears to
"prevail.

"The Minister of Agriculture in his Report of the 15th of
"October 1872, expresses the 'opinion that it is desirable to
"'have such a Naturalization of all Foreigners in Canada as
"'would obtain for them the same recognition as British sub-
"'jects in Foreign Countries, as if they were naturalized in the
"'United Kingdom;' and the address of the House of Com-
"mons of Canada of the 21st of April last, states, 'That under
"'the existing Law persons of Alien birth, naturalized in, and
"'under the Laws of the Dominion of Canada, acquire no rights
"'or privileges as British subjects beyond the Boundary of the
"'Dominion. That this is regarded as a great hardship and
"'grievance by Naturalized Foreigners who have become sub-
"'jects of the Queen in Canada who justly claim that, after
"'being legally naturalized they should everywhere be recogn-
"'ized as British Subjects.'"

"Although Certificates of Naturalization granted in the Colo-
"nies, are necessarily limited in their operation, yet, as a matter
"of fact, aliens naturalized therein do receive the same protec-
"tion in Foreign Countries as aliens naturalized within the
"United Kingdom, and, indeed, were until the Act of 1870 was
"passed, in a better position in this respect than the latter. For
"upon the report of the Law Officers, a Circular was issued to
"Her Majesty's Diplomatic and Consular Agents, directing
"them 'to extend to persons naturalized in British Colonies and
"'Holders of Passports either from the Colonial Governors, or
"'from the Foreign Office, bearing on the face of them the place
"'of Naturalization and the period for which the Passports are
"'good, the same protection during that period as they are now
"'in the habit of extending to persons holding Passports in
"'which they are described as 'Naturalized British Subjects'
"'(Circular, May 21st, 1866, Appendix to Naturalization Com-
"'mission Report, Page 97). The period for which Passports
"are granted to Colonial Naturalized subjects is twelve months,
"and, if run out, they may be exchanged at any of Her
"Majesty's Missions or Consulates for a Passport strictly
"limited to such length of time as will enable the bearer to
"reach England or any of Her Majesty's Possessions abroad.
"(See Naturalization Commission, Appendix No. 14.)

"On the other hand Aliens naturalized in the United King-
"dom under the Act of 1844, were only granted Certificates
"subject to such restrictions as the Secretary of State thought
"fit to impose, and, from 1858 to 1870, the Certificates were
"granted with the provision that the Certificate absolutely
"ceased and determined if the Naturalized Alien voluntarily
"remained absent from the United Kingdom for a period of
"six months without a License (Ibid., p. 9).

"Whereas, therefore, Aliens naturalized in the Colonies have "Passports good for a year, at the expiration of which they can "still obtain return Passports, and their Certificates do not "lapse by absence from the Colony in which they were issued, "the Passports granted to aliens naturalized in the United "Kingdom under the Act of 1844 are limited to six months "and lapse absolutely, with the Certificates, if the absence is "longer continued.

"There appears to be an impression in Canada that the "Naturalization Act of 1870 extends to all persons previously "naturalized in the United Kingdom. This however, is not the "case.

"The restrictions in Certificates granted under the Act of "1844, (when no condition of previous residence was made "essential) and the consequent Passport limitation, are still in "force, and, if an Alien, naturalized under the Act of 1844, "desires to obtain the advantages of the Act of 1870, he must "obtain a Certificate of Naturalization under that Act, and can "only do so 'upon the same terms and subject to the same con-"'ditions in and upon which such Certificate might have been "'granted if such Alien had not been previously naturalized "'in the United Kingdom.' Those conditions are that the "Alien, within such limited time as may be allowed by the "Secretary of State, shall have resided in the United Kingdom "for a term of not less than five years, or have been in the "Service of the Crown for that period, and intends when "naturalized either to reside in the United Kingdom or to serve "under the Crown, and shall take the Oath of Allegiance. (33 "Vict., c. 14, No. 7.)

"An Alien naturalized in the United Kingdom under the "Act of 1870 receives a Passport, not limited as to time, but "available for any time, or for any number of journeys, but "with the qualification mentioned in the 7th clause of the Act, "which is endorsed on the Passport as follows:—

"'This Passport is granted with the qualification that the "'bearer shall not, when within the limits of the Foreign State "'of which he was subject previously to obtaining his Certificate "'of Naturalization, be deemed to be a British subject, unless "'he has ceased to be a subject of that State in pursuance of "'the Laws thereof or in pursuance of a Treaty to that effect "'(33 Vict., c. 14).'"

"It will be seen from the foregoing observations that Aliens "naturalized in the Colonies are, as regards protection in "Foreign Countries, not only on the same, but on a better "footing than Aliens naturalized in the United Kingdom under "the Act of 1844, and that, in order to place them, in that "respect, in the same position as Aliens naturalized under the "Act of 1870 it is only necessary to remove the limitation of "one year placed on their Passport, and to substitute for it the "qualification endorsed on the Passport of Aliens naturalized "under the latter Act.

"The limit of one year was placed on their Passports to "guard against cases of persons becoming naturalized in one "of Her Majesty's Possessions under Colonial Enactments "requiring little or no previous residence, and their returning "to their own Country or settling in some Foreign Country "with a claim to British Nationality and Protection to which "they had not become entitled according to recognized prin- "ciples of International Law, by a bona fide change of domicile.

"Such cases would not appear to be sufficiently guarded "against, at all events in regard to persons naturalized in Her "Majesty's Colonial Possessions out of Europe, by the qualifi- "cation endorsed on Passports under the Act of 1870.

"Lord Granville is therefore prepared, if the Earl of Kim- "berly concurs, to relieve Aliens naturalized in Her Majesty's "Colonial Possessions out of Europe from the limit of one year "to which their Passports are restricted, substituting for it the "endorsement used in the Passports of Aliens naturalized under "the Act of 1870. This would require a revision of the Cir- "cular Instructions to Her Majesty's Diplomatic and Consular "Agents and also of the Rules and Regulations for Her "Majesty's Colonial Service of 1867, p. 100 (Naturalization "Commissioner's Report, Appendix, p. 14) and when carried "out would place Aliens naturalized in Her Majesty's Colonial "Possessions out of Europe, on precisely the same footing, so "far as Passports and protection in Foreign Countries are con- "cerned, as Aliens naturalized in the United Kingdom under "the Act of 1870; and thus effect would be given to what would "appear to be the main object both of the suggestions of the "Canadian Minister of Agriculture and of the Address of the "Dominion House of Commons."

ADDRESS OF THE PARLIAMENT OF CANADA.

"*To the Queen's Most Excellent Majesty:*

"*Most Gracious Sovereign:*

"We, Your Majesty's most dutiful and loyal subjects, the "Commons of Canada, in Parliament assembled, humbly ap- "proach Your Majesty, for the purpose of representing:—

"That this House was pleased to learn from the despatch of "the Secretary of State for the Colonies, of date the 3rd "September, 1873, that Her Majesty received very graciously "the Address of this House passed in the same year on the sub- "ject of the Naturalization of Aliens, and begs respectfully to "represent as follows:—

> "That the extension of the Act passed in the 33rd year "of Her Majesty's reign entitled: 'The Naturalization Act "'of 1870,' would not meet the just expectations of the "Germans and other naturalized foreigners in Canada, "inasmuch as the passports granted under the said Act, "although permanent, are expressly declared to be invalid

"in the Foreign State of which the persons naturalized were "formerly subjects—the place of all others in which they "desire to be protected in their required rights and privi- "leges.

"That by the Naturalization Act of 1870 aforesaid, it "is provided that Great Britain will thereafter recognize "and protect in any part of the world all persons legally "naturalized as British subjects, provided they cease by the "laws of their native State to be subjects thereof on changing "their allegiance, or when a Treaty has been made between "Great Britain and the said State to that effect.

"That such a Treaty was negociated between Great "Britain and the United States of America in the year of "Our Lord, 1871, and a further and supplemental Treaty "in the following year, 1872, both of which are working "satisfactorily.

"That a Treaty similar in character was negociated "between the United States of America and Germany, in "the year of Our Lord 1868, and is now in operation.

"That it would promote the public interests and afford "much satisfaction to Her Majesty's naturalized German "subjects in Canada, if a Treaty under the provisions of the "Naturalization Act of 1870, aforesaid, were entered into "between Great Britain and the German States, so that such "persons naturalized in Canada, after a residence therein "of from three to five years (as may be agreed upon by the "contracting Powers) may become entitled to all the rights, "privileges and immunities of British subjects in any part "of the world, and in as full a measure as if they had been "subjects of Great Britain by birth.

"We, therefore, humbly pray that Your Majesty will be "graciously pleased to take such steps as may be necessary "for the negociation of Naturalization Treaties between "Great Britain and the German States, so that Your "Majesty's naturalized German subjects in Canada, may "after a residence herein of from three to five years (as "may be agreed upon by the contracting Powers) become "entitled to all the rights, privileges and immunities of "British subjects in any part of the world, and in as full "a measure as if they had been subjects of Great Britain "by birth.

(Sgd.) "TIMOTHY WARREN ANGLIN,
"*Speaker.*

"House of Commons,
"Ottawa, 5th April, 1875."

MEMORANDUM *by Mr. Todd, on the present state of the question of the Naturalization of Aliens in the Dominion of Canada.*

"Under the provisions of the Imperial Act, 10-11 Vict., c. 83, "passed in 1847, the effect of the naturalization of aliens, by

"Acts passed by Colonial Legislatures, is confined exclusively "to the Colony in which such Laws are enacted, and wherein "the aliens reside; and whenever these aliens pass beyond the "limits of that Colony, they lose all claim to be considered as "British subjects.

Copy *of a Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Governor General on the 29th October, 1880.*

"The Committee of Council have had under consideration the "Despatch (Secret), dated 28th of September 1880, with enclo- "sure from the Right Honourable the Secretary of State for the "Colonies, respecting the position of German settlers natural- "ized in the Dominion of Canada,—and requesting that Your "Excellency will inform him whether the Government of "Canada would be willing that in the event of any Naturaliza- "tion Treaty being concluded with Germany a previous resi- "dence in the Dominion of five years should be made a condition "of naturalization.

"The Hon. the Postmaster General to whom in conjunction "with the Hon. the Minister of Justice the Despatch with "enclosure was referred, reports in the absence of the Minister "of Justice but with his concurrence, that in view of the great "importance to the Dominion of possessing and exercising the "privilege of conferring upon foreigners settled in Canada, "naturalization with the privileges, rights and immunities con- "ferred by Imperial naturalization, it is advisable to accept "the condition suggested in that despatch of five years residence "in the Dominion previous to, and as a condition precedent of "such naturalization.

"The Minister submits that this need not interfere with exist- "ing Acts of the Dominion Parliament under which foreigners "are admitted to the privileges of naturalization in the Domin- "ion, after three years residence therein.

"That the rights and privileges conferred upon aliens by the "existing naturalization laws of the Dominion are:—

"1. To take, hold and transmit real estate in the Domin- "ion in the same manner and to the same extent as natural "born subjects of Her Majesty may.

"2. Eligibility to hold offices, Civil and Military, and to "perform the duties thereof within the Dominion.

"3. Eligibility to vote at all elections whether municipal "or parliamentary within the Dominion.

"That it may not be out of place to remark here that the "naturalization laws of the Dominion are merely a portion of "its internal policy; and operating as they do, within the Domin- "ion only, they confer, and can confer no rights, privileges or "immunities anywhere outside of the Dominion under any "circumstances whatever.

"The Committee concur in the views above submitted and "recommend the same for Your Excellency's approval.

"Certified,

"J. O. COTE,
"*Clerk, Privy Council.*"

I submit, therefore, that the statement that Canada had conferred complete naturalization is not accurate. If the statement is based upon the Statutes of 1828 and those following, I beg to point out that these Statutes were invalidated by the Imperial Act of 1847. At present under the provisions of Section 16 in the Imperial Act of 1870 the operation of a Canadian Naturalization Act is strictly limited to the area of the Dominion.

II. A complete consideration of the second suggestion necessitates a study of the extra-territorial effect of Imperial and Colonial legislation .

Piggott in his book on Extra-territoriality at page 4 says, as follows:—

"There are nevertheless two broad principles which are "the axioms of the subject.

"1. All persons are subject to the laws of a country in "which they are.

"2. No person is subject to the laws of a country in which "he is not.

"But the principle belongs to the domain of theoretical "jurisprudence: its practical application practical legislatures "have not been willing at all times to recognize. There is "another principle, or rather theory, which declares the omni-"potence of Parliament; Parliament can do what it likes "within its own domain. And though it has never cast a "doubt on the inclusion of all 'resident in this realm' "within its sway, it has thought fit not to hold itself too "strictly bound by the second principle. It has in fact in "some cases presumed to regulate men's conduct abroad; it "has indeed not always confined itself to British subjects.

"There are many laws which do in fact provide for the "punishment of offences committed by British subjects "abroad; the breach of the peace of the Sovereign being "legally laid in Middlesex. The earliest, I think, of these "enactments was passed in the year 1543, 'for the Trial of "Treasons committed out of the King's Majesty's Dominions.' "It recited that 'Forasmuch as some doubts and questions "have been moved, that certain kinds of treasons, mis-"prisions, concealments of treasons, done, perpetrated, or com-"mitted out of the King's Majesty's realm of England, and "other his Grace's dominions, cannot, nor may, by the com-"mon laws of this realm be enquired of, heard and determined "within this his said realm of England; for a plain remedy,

"order and declaration therein to be had and made,' it was "enacted that henceforth such offences should be tried before "the King's justices. The statute applied to 'any person or "persons out of this realm of England.'

"The catalogue of offences committed abroad which may "be tried in England includes inducements to mutiny and "take seditious oaths; coinage offences; murder and man- "slaughter; offences against the bankruptcy laws, and others. "In many foreign countries the catalogue is much longer.

"But there is an obvious impediment in the way of enforc- "ing such laws which imposes a practical limitation to this "omnipotence of Parliament, even with regard to British "subjects abroad; for extra-territorial laws must be of im- "perfect sanction. And moreover their existence does not "absolve the persons to whom they apply from obedience to "the law of the country in which they are, nor withdraw them "from the jurisdiction of its Courts. If such a law is "broken, and the offender comes back to England, he can be "apprehended and brought to trial; but there is obviously no "machinery inherent in the Executive or the Judicature by "which he can be brought to justice if he remains abroad. "Recourse may be had to trial in absence, but the Courts "possess no means of carrying any personal sentence into "force; the only penalty which Parliament can adopt is out- "lawry and confiscation of goods."

Todd in his Parliamentary Government in the British Colonies, Second Edition, at page 244, discusses the decision of the House of Lords in 1839 in the Auchterarder Case. A settlement between the Crown and the Scottish Established Church was entered into and ratified by the Scottish Parliament in 1690. Immediately after the Union between England and Scotland, which took place in 1704, the Imperial Parliament in 1707 enacted a law to declare that the existing form of Presbyterian church government in Scotland, its doctrine and discipline, should continue unchanged and unaltered. Nevertheless, in 1711, the Imperial Parliament repealed this Act of 1707 and the Scottish Act of 1690.

He also refers to the Act of Union with Ireland, which declared that the establishment of the Church of England and Ireland "to be in full force forever." Nevertheless the Act of 1869 disestablished and disendowed the Irish Church.

Todd concludes the reference to these decisions as follows:—

"These decisions warrant the conclusion that by the law of "England the Imperial parliament is regarded as omnipotent "and supreme in all matters upon which it may undertake to "legislate; and that no court of law would venture to question "the right of Parliament to legislate in any case or upon any

"question, or presume to assert that any act of the Imperial "Parliament was ultra vires."

These comments are relevant because the question has been raised whether the Imperial Parliament having by the British North America Act authorized the Dominion Parliament to legislate respecting the naturalization of aliens, a Statute in derogation in this grant would be unconstitutional or ineffective. All the authorities unhesitatingly support the supremacy of the Imperial Parliament and assert that the Courts of the Empire have no right to question the plain words of an Imperial Statute.

On the other hand, Colonial legislation has no extra-territorial effect except by virtue of Imperial authority.

The grant of legislative jurisdiction to the Parliament of Canada by the British North America Act is limited and that while the Authority of the British Parliament within the territorial limits of Canada with respect to aliens and naturalization is transferred to the Dominion Parliament, it is transferred to that extent alone. Section 91 of the British North America Act commences as follows:—

"It shall be lawful for the Queen, by and with the advice "and consent of the Senate and House of Commons, to make "laws for the peace, order and good government of Canada."

It will be observed that a similar wording is adopted with respect to all the colonies in the Imperial Statutes creating autonomous colonial Legislatures. The South African Act of 1909, Section 59, is as follows:—

"Parliament shall have full power to make laws for the "peace, order and good government of the Union."

The Commonwealth of Australia Act, Cap. 12, Section 51, is as follows:—

"The Parliament shall, subject to this constitution, have "power to make laws for the peace, order and good govern-"ment of the Commonwealth."

The New Zealand Act, 15-16 Victoria, Cap. 72, Section 18, is as follows:—

'It shall be lawful for the Superintendent of each Prov-"ince, with the advice and consent of the Provincial Council "thereof, to make and ordain all such laws and ordinances "(except and subject as herein mentioned) as may be "required for the peace, order and good government of the "said Province; provided that the same be not repugnant to "the law of England."

I have not investigated the Statutes conferring legislative authority in other colonies, but I believe that in any case the authority to legislate with respect to peace, order and good government is limited to the colony in question.

The late Sir Henry Jenkyns, K.C.B., Assistant Parliamentary Counsel from 1869 to 1886, and Lord Thring's successor as chief Parliamentary Counsel from that time to the year 1899, commenting upon this and similar sections, says:—

"The power to make 'laws for the peace, order and good "government of the colony' confines colonial legislation to the "territorial limits of the colony. Colonial legislatures are "local and territorial legislatures, not merely in the sense "in which every legislature is practically limited by the "impossibility of making its legislation effective in alien "jurisdictions, but in the sense that even within its own "jurisdiction the municipal courts of a colony treat its extra-"territorial legislation as a nullity."

This view has been sustained by judicial authority in McLeod v. Attorney-General for New South Wales, 1891, A.C. 455. Lord Halsbury, delivering an opinion in the Privy Council, said:

"Their Lordships think it right to add that they are of "opinion that if the wider construction had been applied to "the Statute, and it was supposed that it was intended "thereby to comprehend cases so wide as those insisted on by "the Bar, it would be beyond the jurisdiction of the colony to "enact such a law. Their jurisdiction is confined within "their own territory, and the maxim which has been more "than once quoted, '*Extra territorium jus decenti impuni "non paratur*' will be applicable to such a case."

The subject is also dealt with by the Privy Council in Attorney General v. Cain, 1906, A.C. 542, p. 546 of the Judgment.

"One of the rights possessed by the Supreme power in "every State is the right to refuse to permit an alien to enter "that State, to annex what conditions it pleases to the per-"mission to enter it and to expel or deport from the State at pleasure even a friendly alien, especially if it considers his "presence in the State opposed to its peace, order and good "government or to its social or material interests: Vattel Laws "of Nations, book I., S. 231, II. s. 125. The Imperial "Government might delegate those powers to the Governor or "the Government of one of the Colonies either by Royal "Proclamation which has the force of a Statute—Campbell

"v. Hall, 1774, I. Cowper 204—or by a Statute of the "Imperial Parliament or by the Statute of a local parliament to which the Crown has assented. . . . If, therefore, power to expel aliens who had entered Canada against "the laws of the Dominion was by this Statute given to the "Government of the Dominion, as their Lordships think it "was, it necessarily follows that the Statute has also given "them power to impose that extra-territorial constraint which "is necessary to enable them to expel those aliens from their "borders to the same extent as the Imperial Government "could itself have imposed the constraint for a similar purpose had the Statute never been passed."

The Bigamy case, 1897, 27 S.C.R. 461, also appears to be in point. Chief Justice Strong quoted the McLeod case above referred to and others, and held that the sections of the Criminal Code making criminal a ceremony performed outside of Canada were *ultra vires,* because it was extra-territorial legislation. The legislation was upheld solely on the ground that the essence of the crime consisted in the leaving of Canada for the purpose of going through a ceremony of marriage. It is only because a portion of the completed crime was carried out within the territorial jurisdiction of Canada that the legislation was upheld.

Peninsular and Oriental Steam Navigation Company v. Kingston, 1903, A.C. 471, also illustrates the point. Seals placed on goods by customs' officers of Victoria were broken at sea, contrary to Statute, and it was held that when the ship entered another Victorian port the offence was complete and the constitutionality of the Statute was upheld.

It may be contended that authority to legislate with respect to aliens and naturalization conferred on the Dominion by the British North America Act implies extra-territorial authority, and that therefore the words "aliens and naturalization" should not be held to be limited by the preceding words, "for the peace, order and good government of Canada." A little consideration, however, will show that this view is not tenable. I think the true rule of construction in such a case is that where general words are expressed subject to a limitation, if the limitation entirely destroyed the effectiveness of the general words the limitation would be inoperative, but if a meaning could be given to the general words subject to the limitation, then the limitation is effective. In other words, if

the words "aliens and naturalization" have a definite application within the territorial limits of Canada, the limitation should be imposed. I do not think there can be any question but that these words have an effective application within the territorial limits of Canada. We have our local naturalization, the subject under discussion. We have legislation respecting the exclusion and the admission of aliens within the limits of Canada. It is quite apparent, therefore, that the limitation can be imposed, and give a definite application of the general words so limited.

This subject is discussed in many cases referred to in Clement's Canadian Constitution, Second Edition, page 65, and by Lefroy in the Law of Legislative Power in Canada at page 322.

The duality of law in the Colonies is pointed out by Lord Justice Sir G. J. Turner in Low v. Routledge, L.R. 1, C.H., at page 46, as follows:—

"A more plausible argument on the part of the Defendants "was this: It was said, and I assume for the purposes of the "argument, but for that purpose only, that by a Canadian sta- "tute an alien coming into Canada for the purpose of publish- "ing a work, and publishing it there, would not be entitled to "copyright in the work so published; and it was insisted that "an alien coming into Canada could acquire only such rights as "are given by the law of Canada, and could not, therefore, be "entitled to copyright and some cases were cited in support of "this argument. On examining these cases, however, they will "be found to decide no more than this:—that as to aliens coming "within the British colonies their civil rights within the colo- "nies depend upon the colonial laws; they decide nothing as to "the civil rights of aliens beyond the limits of the colonies. "This argument, on the part of the Defendants is, in truth, "founded on a confusion between the rights of an alien as a "subject of the colony, and his rights as a subject of the Crown. "every alien coming into a British colony becomes temporarily "a subject of the Crown—bound by, subject to, and entitled to "the benefit of the laws which affect all British subjects. He "has obligations and rights both within and beyond the colony "into which he comes. As to his rights within the colony he "may well be bound by its laws, but as to his rights beyond the "colony he cannot be affected by those laws; for the laws of a "colony cannot extend beyond its territorial limits."

The only deduction, therefore, to be drawn from these authorities and references is that Colonial legislation has no effect extra-territorially except by virtue of Imperial legislation, and

I think it may be said without hesitation that in every case where Colonial laws have extra-territorial effect, Imperial authority therefor can be found. This authority may be by expressed Statute, an example of which was found in Section 264 of the Imperial Merchants' Shipping Act, 1894.

Attorney General v. Cain above referred to appears to be an authority that extra-territorial effect may be given to a Colonial Statute by the assent of the Crown thereto. In this judgment, at page 546, Lord Justice Atkinson says as follows:—

"The Imperial Government might delegate those powers to "the Governor or Government of one of the Colonies, or by "Royal Proclamation, which has the force of a Statute, or by a "Statute of the Imperial Parliament, or by a Statute of a "local Parliament to which the Crown has assented."

I submit, therefore, that the second suggestion that an Imperial Statute is not necessary is without foundation. In the first place an amendment of existing Imperial Law is necessary. No effect beyond the limits of Canada can be given to a Canadian Naturalization Act while Section 16 of the Imperial Act of 1870 remains unrepealed, and moreover no extra-territorial effect can be had of a Canadian Statute without either an Imperial Statute or the assent of the Crown to a Canadian Naturalization Act.

But it has been stated that the full effect sought to be attained by the Bill under consideration could be had by the Imperial Parliament and each of the Colonies entering into concurrent legislation by which each would recognize the naturalization of the other and by that means complete naturalization would be obtained. This would be a sufficient method perhaps if all the Possessions and Colonies of the Empire were autonomous as the Dominions are. Such is, however, not the case and the legislation in some of the Crown Colonies and in many of the Possessions is by Imperial Order-in-Council. No doubt legislation might be effected in this way. Even in a Crown Colony no extra-territorial effect would be given to a Naturalization Act of the Dominion except by virtue of an Imperial Order-in-Council. The object desired is complete Imperial naturalization without any doubt or confusion respecting it. Canada wants subjects naturalized here to be recognized as British subjects in all colonies and possessions and wants this recognition to be evident without reference to the legislation of the multitude of such places. I submit that it is doubtful whether this method of concurrent legislation which on its face is complicated and

doubtful, would be as effective as an Imperial Statute which would be effective in every part of the Empire.

The following are resolutions of the Imperial Conference, 1911:—

"(1) Imperial nationality should be world wide and uni-
"form, each Dominion being left free to grant local nation-
"ality on such terms as its legislature should think fit."

The world wide effect of Imperial naturalization would no doubt be limited *proprio vigore* to the British Dominions, but a foreigner naturalized under the Imperial Statute under consideration would be entitled to all the rights of a British subject wherever he might be except the State of his origin, and would be entitled to all the protection which the Empire can afford a native born.

It should be pointed out that with local British nationality which at present prevails, the good offices of the Imperial Foreign Office are limited, and are no doubt ineffective in the state of origin of the naturalized person. It should also be confidently asserted that the good offices of the Imperial Foreign Office would be rendered more effective when naturalization was conferred under a colonial Statute having Imperial sanction, and under regulations approved of by the Imperial Government. There can be no doubt, also, that reciprocal treaties and conventions would be more necessary, and would be promoted by the Imperial Government so that ultimately Imperial naturalization would become "world-wide" in every sense.

"(2) The Mother Country finds it necessary to maintain
"five years as the qualifying period. This is a safeguard
"to the Dominions as well as to her, but five years anywhere
"in the Empire should be as good as five years in the United
"Kingdom."

The Imperial Government have announced in no uncertain way that they insist upon a residence of five years as a qualification for naturalization.

Two standards of naturalization appear to be objectionable. A little consideration, however, will show that at present time there are two standards, and that the effect of the Imperial Bill will be to lessen that anomalous state of affairs. In Canada at the present time there are two standards of British

nationality, the native-born and naturalized. The effect of the Bill will be to swell the number of those who have the status of native-born. A shorter period of residence appears to have been thought desirable in Canada for two purposes, first, that settlers in the Northwest might obtain their land grant within a shorter time, thus affording more generous settlement privileges, and second that the franchise might be conferred at an earlier date. There appears to be no reason why either of these should be dependent upon British nationality. In the United States there are two steps to be taken to attain citizenship. The first is by filing preliminary papers, taking the oath of allegiance, and the second by obtaining a Certificate of Naturalization. A similar practice might be introduced into Canada by which, after the expiration of three years residence a person might apply for naturalization and certificate of application be granted which would satisfy the present requirements for the franchise and homestead rights in the Northwest. This certificate might then be made the basis of a subsequent application for naturalization, and the term "naturalization" applied to this stage alone.

"(3) The grant of Imperial nationality is in every case "discretionary, and this discretion should be exercised by "those responsible in the area in which the applicant has "spent the last twelve months."

This paragraph does not appear to call for any special comment. The discretion of the Secretary of State for Home Affairs is absolute and similarly, the discretion of the Governments of the Dominions would be absolute.

"(4) The Imperial Act should be so framed as to enable "each self-governing Dominion to adopt it."

The Bill appears to be framed with the object of fully recognizing the autonomy of the Dominions. Naturalization will not be by virtue of Imperial Statute but by Statute of the Dominions, the only effect of the Imperial Statute being to confer extra-territorial jurisdiction upon the Dominions with respect to naturalization.

"(5) Nothing now proposed would affect the validity and "effectiveness of local laws regulating immigration or the like "or differentiating between classes of British subjects."

This does not appear to require any particular comment. The authority of the Dominions to exclude undesirables and to differentiate between different classes of British subjects is completely recognized.

In concluding my observations on this criticism I beg to point out the inconclusive deductions which are frequently suggested from some rather oratorical quotations from judicial opinions. In particular from Hodge v. the Queen, 9 A.C., 131, as follows:

"It (The British North America Act) conferred power, not "in any sense to be exercised by delegation from or as agents of "the Imperial Parliament but authority as plenary and ample, "within the limits prescribed by Sec. 92 as the Imperial Par- "liament in the plenitude of its power possessed and could "bestow."

Due importance should be given the very pertinent limitation which the opinion includes—"Within the limits prescribed by Sec. 92," and I submit that the sovereign power indicated is limited strictly by the ambit of its jurisdiction and the subjects on which legislation may be enacted.

Another opinion in Toronto v. Lambe, 12 A.C., 588, is misleading unless applied with due regard to implied limitation. It is as follows:—

"That the Federation Act exhausts the whole range of legis- "lative power and that whatever is not thereby given to the "provincial legislatures rests with the Parliament."

This applied universally would authorize Parliament to amend the British North America Act and to redistribute between Parliament and the Provincial legislatures the different subjects of legislation set out in Sections 91 and 92.

The "plenitude of power" and the "exhaustion of legislation are glittering generalities which must be applied cautiously.

III. The word *status* has no particular virtue of its own, and it is therefore necessary to consider the nature of the particular status conferred by naturalization. A definition given by Piggott is as follows:—

"Nationality is the status of an individual as subject or "citizen in relation to a particular sovereign or state."

I submit and all the authorities shew that the word "status" connotes the rights and privileges, duties and obligations applicable to any status under consideration. The word has no meaning when it is severed from its application to such rights

and duties. Moreover the word "status" is subjective. Holland indicates this meaning of the word in the following quotations:—

"A 'natural' as opposed to an 'artificial' person is such a "human being as is regarded by the law as capable of rights or "duties: in the language of Roman law as having a 'status.'

"The status of the persons concerned is, as we before obser- "ved, another basis of the division of rights. That is to say, "there are some rights in which the status of the persons con- "cerned has to be specially taken into consideration while in "others this is not the case."

Markby expresses a similar view, as follows:—

"176. Now when we speak of 'status' or 'condition' we "always mean, I believe, some aggregate of rights and duties "attached to a person, and the difficulty there is about explain- "ing the meaning of the word 'status' or 'condition' arises from "its being used sometimes for one such aggregate and sometimes "for another. We may apply it to the aggregate of rights and "duties which attach to a man as a member of the general com- "munity. It would be permissible to speak of the 'status' or "'condition' of a citizen.

"177. But the word 'status' or 'condition' is also, and more "generally, used to express the aggregate of rights and duties "which are attached to a person as one of a class. Thus we may "speak of the 'status' or 'condition' of a parent, a husband, "a wife or a child."

Austin similarly as follows:—

"There are certain rights and duties, with certain capacities "and incapacities to take rights and incur duties, by which "persons, as subjects of law, are variously determined to certain "classes.

"The rights, duties, capacities or incapacities, which deter- "mine a given person to any of these classes, constitute a "condition or status which the person occupies, or with "which the person is invested."

Moreover, Austin discusses the views under consideration and shews that they are exploded, as follows:—

"I now will examine certain definitions of *status*, with certain "definitions of the distinction founded on the idea of *status*, "which, in my opinion, are thoroughly erroneous, and have "engendered much of the obscurity wherein the idea and the "distinction are involved.

"According to a definition of *status*, which now (I think) is "exploded, but which was formerly current with modern civi- "lians, 'Status est *qualitas*, cujus ratione homines diverso jure

"utuntur.' 'Exempli gratia' (adds Heineccius,) 'Alio jure "utitur liber homo; alio, servus; alio, civis; alio, peregrinus.'

"Now a given person bears a given condition (or, in other "words, belongs to a given class), by virtue of the rights or "duties, the capacities or incapacities, which are peculiar to "persons of that given kind or sort. Those rights or duties, "capacities or incapacities, *are* the condition or *status* with "which the person is clothed. They are considered as forming "a complex whole: And, as forming a complex whole, they are "said to constitute a status which the person occupies, or a "condition, character or *person* which the person bears.

"But, according to the definition which I am now consider-"ing, the rights or duties, capacities or incapacities are not "themselves the *status*: but the *status* is a quality which lies or "inheres in the given person, and of which the rights or duties, "capacities or incapacities, are merely products or consequences.

"The definition (it is manifest) is merely a *case* of the once "current jargon about *occult qualities*."

I submit that the word status is improperly used when it does not indicate the rights and duties of the persons to whom it is applied. There is no status of naturalization except with respect to the rights and duties thereby implied. These rights and duties may vary. It is inconceivable that a British subject should exist without rights and duties as such a subject. These rights and duties are such as are imposed by the law which makes an alien a British subject. The Dominion Statute makes an alien a British subject in Canada and not elsewhere.

In this discussion a reference to the status of married people is misleading.

This is clearly shewn in a judgment of Lord Westbury in the House of Lords, Udny v. Udny, 1869, 2 L.R., Sc. Ap., at page 459, and set out in the compilation on Imperial Naturalization as follows:—

"The law of England, and of almost all civilised countries, "ascribes to each individual at his birth two distinct legal states "or conditions, one by virtue of which he becomes the subject of "some particular country, binding him by the tie of natural "allegiance, and which may be called his political status; "another by virtue of which he has ascribed to him the character "of a citizen of some particular country, and as such is posses-"sed of certain municipal rights and subject to certain obliga-"tions, which latter character is the civil status or condition of "the individual, and may be quite different from his political "status. The political status may depend on different laws in "different countries, whereas the civil status is governed uni-"versally by one single principle, namely, that of domicile, "which is the criterion established by law for the purpose of

"determining civil status. For it is on this basis that the "personal rights of the party, that is to say, the law which "determines his majority or minority, his marriage, succession, "testacy, or intestacy, must depend."

It is well laid down that the comity of nations, unless under treaty obligation, does not embrace political or penal laws.

Vattel describes the relation between the sovereign and the subject as follows, Book I., Sec. 17:—

"If a nation is obliged to preserve itself, it is no less obliged "carefully to preserve all its members. The nation owes "this to itself, since the loss even of one of its members "weakens it, and is injurious to its preservation. It owes "this also to the members in particular, in consequence of the "very act of association; for those who compose a nation are "united for their defence and common advantage; and none "can be justly deprived of this union, and of the advantages "he expects to derive from it while he on his side fulfils the "conditions."

The relation between the Sovereign and the subject is reciprocal. A nation or a state which cannot enter into any extra-territorial relation whatever cannot make a treaty or convention with respect to its subjects beyond its borders, and has no means of protecting its subjects in foreign countries, can have no reciprocal relation to its subjects beyond its borders. Nationality and citizenship dissolve when the citizen passes beyond the territorial limits of such a country. The relation of state and subject exist only within such a country. Surely this is the position of a naturalized British subject in Canada, and when such a person leaves Canada the relation of state and subject ceases. It can be only by virtue of Imperial legislation that this reciprocal relation can be created beyond the limits of a Dominion.

I submit therefore that these criticisms while well worthy of consideration, in no way attack the merits of the Bill. There are, however, some criticisms of the Bill which I wish to submit for your consideration.

One of the most important points for consideration is the resulting condition in Canada if this Imperial Bill is enacted and approved of by the Dominion. Canada must then unify its naturalization law with that of the United Kingdom, otherwise have two classes of British nationality in Canada. Sec-

tion 8 of the Act seems to contemplate this. This, however, cannot be considered a detriment to the Act in so far as Canada is concerned. It seems to be impossible that all the colonies of the United Kingdom should agree upon the period of five years' residence, and the United Kingdom absolutely declines to shorten the period. This clause, therefore permits the local naturalization which now obtains in the various colonies to be continued, and to superadd what is no doubt a superior class of British nationality. It may be well to call the status created by local naturalization by some other name for the purpose of avoiding confusion.

The place of residence is also a matter for consideration. The five years need not be spent in the United Kingdom or in any one particular colony. The twelve months immediately preceding naturalization must, however, be spent where the naturalization is effected, and the five years may be made of intermittent periods within the preceding eight years, and even this period may be extended. This appears to be the result of Section 2, as appears from sub-section 5. If this is the correct interpretation of the section, paragraph (*a*) should be slightly modified, as its grammatical construction appears to make the eight years in question applicable only to a period of service, and not to a period of residence.

Section 7 is that which extends the Act to the Dominions, and it will be noted that this Section makes the Act applicable to Canada, if adopted by Parliament, in so far only as its provisions relate to the grant and revocation of Certificate of Naturalization, and no further. This appears to me to be objectionable, because it would follow that the regulations referred to in Section 18, under which the Act would be administered in Canada, will be made in the United Kingdom. Subsection (2) of Section 18 may be construed to authorize the Dominion to make regulations. No doubt it is advisable that the regulations should be uniform, if possible. But local conditions may make some regulations difficult to conform to, and local conditions are best understood by local authorities. For instance the persons before whom the Oath of Allegiance will be taken are named by Imperial authorities. This may not be intended, or may be an oversight, but I think from a careful reading of the Bill no other interpretation can be arrived at, and this provision should be made clear.

The same objection arises with respect to expatriation. The Act only confers upon the colonies the right to naturalize, and no authority with respect to expatriation. A person in a colony desiring expatriation or to make a declaration of alienage under Section 13 of the Bill would therefore have to obtain it under Imperial Statutes and regulations, not Statutes and regulations of the colony. I submit that authority to expatriate should follow equally with the right to naturalize.

It appears to me that the territorial application of the Act should be made more definite. There is no doubt, as stated in Maxwell, (3rd Ed., p. 196), that in the absence of an intention clearly expressed or to be inferred either from its language or from the object or subject matter or history of the enactment, the presumption is that Parliament, (Imperial), does not design its Statutes to operate on its subjects beyond the territorial limits of the United Kingdom, and it may be further stated that on the face of this proposed legislation it is to apply to the whole Empire. There are clauses of it, however, which should be restricted to the United Kingdom alone, such, for instance, as Sections 16 and 17. There are some Sections which would apply to Dominions only when they have adopted the Act, as for instance Sections 2 to 6, and there are other Sections which are apparently intended to apply to the whole Empire, including the Dominions, whether they adopt the Act or not, such, for instance, as Sections 1 and 9 to 11. This may or may not be a correct interpretation of the Bill, and it appears to me that there should be a Section indicating clearly the territorial scope of the legislation.

THOMAS MULVEY,
Under-Secretary of State.

Department of the Secretary of State,
Ottawa, 15 April, 1912.

IMPERIAL NATURALIZATION

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1912

17274—A

LETTER OF TRANSMISSION.

To the Honourable
WILLIAM JAMES ROCHE, M.D., MP.,
Secretary of State of Canada.

SIR,—

I have the honour to transmit, herewith, as directed, copies of the Imperial and Canadian Naturalization Acts, the Minutes of the Colonial and Imperial Conferences relating to naturalization, the documents submitted to these conferences, the reports of the Imperial Interdepartmental Committee on Naturalization, and such other documents as may be of assistance in discussing the Draft Imperial Naturalization Act at present under consideration.

I have the honour to be, Sir,
Your obedient servant,

THOMAS MULVEY,
Under-Secretary of State.

Department of the Secretary of State,
Ottawa, 22nd Feby., 1912.

CONTENTS

STATUTE OF THE UNITED KINGDOM, 1870.

Chap. 14.

An Act to amend the Law relating to the legal condition of Aliens and British Subjects. (12th May 1870.) A.D. 1870.

WHEREAS it is expedient to amend the law relating to the legal condition of aliens and British subjects:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Naturalization Act, 1870." Short title.

Status of Aliens in the United Kingdom.

2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from or in succession to a natural-born British subject: Provided,— Capacity of an alien as to property.

(1) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise:

(2) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him:

(3) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act.

3. Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of Power of naturalized

Aliens to divest themselves of their status in certain cases.

that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by Order in Council, to declare that such convention has been entered into by Her Majesty; and from and after the date of such Order in Council, any person being originally a subject or citizen of the state referred to in such order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows; that is to say,—If the declarant be in the United Kingdom in the presence of any justice of the peace, if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

How British-born subject may cease to be such.

4. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign state a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

Alien not entitled to jury de medietate linguae.

5. From and after the passing of this Act, an alien shall not be entitled to be tried by a jury *de medietate linguæ,* but shall be triable in the same manner as if he were a natural-born subject.

EXPATRIATION.

Capacity of British subject to renounce allegiance to Her Majesty.

6. Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under any disability voluntarily become naturalized in such state, shall from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien; Provided,—

(1) That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration hereinafter referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect:

(2) A declaration of British nationality may be made, and the oath of allegiance be taken as follows; that is to say, —if the declarant be in the United Kingdom in the presence of a justice of the peace; if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

NATURALIZATION AND RESUMPTION OF BRITISH NATIONALITY.

Certificate of naturalization.

7. An alien who, within such limited time before making the application herein-after mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order, or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration and may, with or without assigning any reason, give or withold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

Certificate of re-admission to British nationality.

8. A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate herein-after referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said Secretary of State shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a cer-

tificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

Form of oath of allegiance.

9. The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,

"I do swear that I will be faithful and "bear true allegiance to Her Majesty Queen Victoria, her "heirs and successors, according to law. So help me GOD."

National Status of Married Women and Infant Children.

National status of married women and infant children.

10. The following enactments shall be made with respect to the national status of women and children:

(1) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject.

(2) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this Act;

(3) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject;

(4) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents;

(5) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

Supplemental Provisions.

Regulations as to registration.

11. One of Her Majesty's Principal Secretaries of State may by regulation provide for the following matters:—

(1) The form and registration of declarations of British nationality;

(2) The form and registration of certificates of naturalization in the United Kingdom;

(3) The form and registration of certificates of re-admission to British nationality;

(4) The form and registration of declarations of alienage;

(5) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations:

(6) The transmission to the United Kingdom for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this Act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this Act:

(7) With the consent of the Treasury the imposition and application of fees in respect of any registration authorized to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this Act;

The said Secretary of State, by a further regulation, may repeal, alter, or add, to any regulation previously made by him in pursuance of this section.

Any regulation made by the said Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

Regulations as to evidence.

12. The following regulations shall be made with respect to evidence under this Act:—

(1) Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any

person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned:

(2) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:

(3) A certificate of readmission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:

(4) Entries in any register authorized to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the said Secretary of State authorized to be inserted in the register:

(5) The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

MISCELLANEOUS.

Saving of letters of denization.

13. Nothing in this Act contained shall affect the grant of letters of denization by Her Majesty.

Saving as to British ships.

14. Nothing in this Act contained shall qualify an alien to be the owner of a British ship.

Saving of allegiance prior to expatriation.

15. Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

Power of of colonies to legislate with

16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of

respect to naturalization.

naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

Definition of terms.

17. In this Act, if not inconsistent with the context or subject-matter theerof,—

"Disability" shall mean the status of being an infant, lunatic, idiot, or married woman:

"British possession" shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this Act:

"The Governor of any British possession" shall include any person exercising the chief authority in such possession:

"Officer in the Diplomatic Service of Her Majesty" shall mean any Ambassador, Minister or Chargé d'Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d'Affaires, or Secretary of Legation to execute any duties imposed by this Act on an officer in the Diplomatic Service of Her Majesty:

"Officer in the Consular Service of Her Majesty" shall mean and include Consul-General, Consul, Vice-Consul, and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, and Consular Agent.

Repeal of Acts Mentioned in Schedule.

Repeal of Acts.

18. The several Acts set forth in the first and second parts of the schedule annexed hereto shall be wholly repealed, and the Acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; provided that the repeal enacted in this Act shall not affect—

(1) Any right acquired or thing done before the passing of this Act:

(2) Any liability accruing before the passing of this Act:

(3) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the passing of this Act:

(4) The institution of any investigation or legal proceeding or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

NOTE.—Reference is made to the repeal of the "whole Act" where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous Acts.

This schedule, so far as respects Acts prior to the reign of George the Second, other than Acts of the Irish Parliament, refers to the edition prepared under the direction of the Record Commission, intituled "The Statutes of the Realm; "printed by Command of His Majesty King George the "Third, in pursuance of an Address of the House of Com- "mons of Great Britain. From original Records and authen- "tic Manuscripts."

PART I.

ACTS WHOLLY REPEALED, OTHER THAN ACTS OF THE IRISH PARLIAMENT.

Date.	Title.
7 Jas. I. c. 2.....	An Act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy.
II Will. 3, c. 6 (1)..	An Act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.
13 Geo. 2, c. 7. .. .	An Act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America.
20 Geo. 2, c. 44.....	An Act to extend the provisions of an Act made in the thirteenth year of His present Majesty's reign, intituled "An "Act for naturalizing foreign Protestants and others therein "mentioned, as are settled or shall settle in any of His "Majesty's colonies in America, to other foreign Protestants "who conscientiously scruple the taking of an oath."
13 Geo. 3, c. 25.....	An Act to explain two Acts of Parliament, one of the thirteenth year of the reign of His late Majesty, "for naturalizing "such foreign Protestants and others, as are settled or shall "settle in any of His Majesty's colonies in America," and the other of the second year of the reign of His present Majesty, "for naturalizing such foreign Protestants as have "served or shall serve as officers or soldiers in His Majesty's "Royal American regiment, or as engineers in America."
14 Geo. 3, c. 84.....	An Act to prevent certain inconveniences that may happen by bills of naturalization.
16 Geo. 3, c. 52.....	An Act to declare His Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.
6 Geo. 4, c. 67.....	An Act to alter and amend an Act passed in the seventh year of the reign of His Majesty King James the First, intituled "An Act that all such as are to be naturalized or restored "in blood shall first receive the sacrament of the Lord's Sup- "per and the oath of allegiance and the oath of supremacy.
7 & 8 Vic., c. 66.. .	An Act to amend the laws relating to aliens.
10 & 11 Vict., c. 83.	An Act for the naturalization of aliens.

(1) 11 and 12 Wm. 3 (Ruff).

PART II.

Acts of the Irish Parliament Wholly Repealed.

Date.	Title.
14 & 15 Chas. 2, c. 13.	An Act for encouraging Protestant strangers and other to inhabit and plant in the Kingdom of Ireland.
2 Anne, c. 14	An Act for naturalizing of all Protestant strangers in this kingdom.
19 & 20 Geo. 3, c. 29.	An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom.
23 & 24 Geo. 3, c. 38.	An Act for extending the provisions of an Act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled "An Act for naturalizing such "foreign merchants, traders, artificers, artizans, manu- "facturers, workmen, seamen, farmers, and others as shall "settle in this kingdom."
36 Geo. 3, c. 48.....	An Act to explain and amend an Act, intituled "An Act for "naturalizing such foreign merchants, traders, artificers, "artizans, manufacturers, workmen, seamen, farmers, and "others who shall settle in this kingdom."

PART III.

Acts Partially Repealed.

Date.	Title.	Extent of repeal.
4 Geo. I, c. 9. Act of Irish Parliament.	An Act for reviving, continuing, and amending several statutes made in this kingdom heretofore temporary.	So far as it makes perpetual the Act of 2 Anne c. 14.
6 Geo. 4, c. 50...	An Act for consolidating and amending the laws relative to Jurors and Juries.	The whole of sect. 47.
3 & 4 Will. 4, c. 91.	An Act consolidating and amending the laws relating to Jurors and Juries in Ireland.	The whole of sect. 37,

CONVENTION BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA RELATIVE TO NATURALIZATION.

Signed at London, May 13, 1870.

(Ratifications exchanged at London, August 10, 1870.)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being desirous to regulate the citizenship of British subjects who have emigrated or who may emigrate from the British dominions to the United States of America, and of citizens of the United States of America who have emigrated or who may emigrate from the United States of America to the British dominions, have resolved to conclude a Convention for that purpose, and have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honourable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs;

And the President of the United States of America, John Lothrop Motley, Esquire, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following Articles:—

Article I.

British subjects who have become, or shall become, and are naturalized according to law within the United States of America as citizens thereof, shall, subject to the provisions of Article II, be held by Great Britain to be in all respects and for all purposes citizens of the United States, and shall be treated as such by Great Britain.

Reciprocally, citizens of the United States of America who have become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of Article II, be held by the United

States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States.

ARTICLE II.

Such British subjects as aforesaid who have become and are naturalized as citizens within the United States, shall be at liberty to renounce their naturalization and to resume their British nationality, provided that such renunciation be publicly declared within two years after the twelfth day of May, 1870.

Such citizens of the United States as aforesaid who have become and are naturalized within the dominions of Her Britannic Majesty as British subjects, shall be at liberty to renounce their naturalization and to resume their nationality as citizens of the United States, provided that such renunciation be publicly declared within two years after the exchange of the ratifications of the present Convention.

The manner in which this renunciation may be made and publicly declared shall be agreed upon by the Governments of the respective countries.

ARTICLE III.

If any such British subject as aforesaid, naturalized in the United States, should renew his residence within the dominions of Her Britannic Majesty, Her Majesty's Government may, on his own application and on such conditions as that Government may think fit to impose, readmit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

In the same manner, if any such citizen of the United States as aforesaid, naturalized within the dominions of Her Britannic Majesty, should renew his residence in the United States, the United States' Government may, on his own application and on such conditions as that Government may think fit to impose, readmit him to the character and privileges of a citizen of the United States, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization.

ARTICLE IV.

The present Convention shall be ratified by Her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

(L.S.) CLARENDON.
(L.S.) JOHN LOTHROP MOTLEY.

STATUTE OF THE UNITED KINGDOM, 1872.

Chapter 39.

An Act for amending the Law in certain cases in relation to Naturalization. (25th July 1872.)

WHEREAS by a Convention between Her Majesty and the United States of America, supplementary to the Convention of the thirteenth day of May one thousand eight hundred and seventy, respecting naturalization, and signed at Washington on the twenty-third day of February one thousand eight hundred and seventy-one, and a copy of which is contained in the schedule to this Act, provision is made in relation to the renunciation by the citizens and subjects therein mentioned of naturalization or nationality in the presence of the officers therein mentioned:

And whereas doubts are entertained whether such provisions are altogether in accordance with the Naturalization Act, 1870: And whereas other doubts have arisen with respect to the effect of "The Naturalization Act, 1870," on the rights of women married before the passing of that Act; and it is expedient to remove such doubts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Naturalization Act, 1872, and this Act and "The Naturalization Act, 1870," may be cited together as "The Naturalization Acts, 1870 and 1872."

Confirmation of renunciation of nationality under the convention.

2. Any renunciation of naturalization or of nationality made in manner provided by the said supplementary Convention by the persons and under the circumstances in the said Convention in that behalf mentioned shall be valid to all intents, and shall be deemed to be authorised by the said Naturalization Act, 1870.

This section shall be deemed to take effect from the date at which the said supplementary Convention took effect.

Saving clause as to property of married women.

3. Nothing contained in "The Naturalization Act, 1870," shall deprive any married woman of any estate or interest in real or personal property to which she may have become entitled previously to the passing of that Act, or affect such estate or interest to her prejudice.

SCHEDULE.

Convention between Her Majesty and the United States of America, supplementary to the Convention of May 13, 1870, respecting Naturalization.

Signed at Washington, 23rd February, 1871.

(Ratifications exchanged at Washington, May 4, 1871.)

Whereas by the second article of the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America for regulating the citizenship of subjects and citizens of the contracting parties who have emigrated or may emigrate from the dominions of the one to those of the other party, signed at London, on the 13th of May 1870, it was stipulated that the manner in which the renunciation by such subjects and citizens of their naturalization, and the resumption of their native allegiance, may be made and publicly declared, should be agreed upon by the governments of the respective countries; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the President of the United States of America, for the purpose of effecting such agreement, have resolved to conclude a supplemental Convention, and have named as their plenipotentiaries, that is to say: Her Majesty the Queen of the United Kindom of Great Britain and Ireland, Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, and Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America; and the President of the United States of America, Hamilton Fish, Secretary of State; who have agreed as follows:

Article I.

Any person being originally a citizen of the United States who had, previously to May 13, 1870, been naturalized as a British subject, may at any time before August 10, 1872, and any British subject who, at the date first aforesaid, had been naturalized as a citizen within the United States, may at any time before May 12, 1872, publicly declare his renunciation of such naturalization by subscribing an instrument in writing, substantially in the form hereunto appended, and designated as Annex A.

Such renunciation by an original citizen of the United States, of British nationality, shall, within the territories and jurisdiction of the United States, be made in duplicate, in the presence of any court authorized by law for the time being to admit aliens to naturalization, or before the clerk or prothonotary of any such court: if the declarant be beyond the territories of the United States, it shall be made in duplicate, before

any diplomatic or consular officer of the United States. One of such duplicates shall remain of record in the custody of the court or officer in whose presence it was made; the other shall be, without delay, transmitted to the department of State.

Such renunciation, if declared by an original British subject, of his acquired nationality as a citizen of the United States, shall, if the declarant be in the United Kingdom of Great Britain and Ireland, be made in duplicate, in the presence of a justice of the peace; if elsewhere in Her Britannic Majesty's dominions, in triplicate, in the presence of any judge of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in triplicate, in the presence of any officer in the diplomatic or consular service of Her Majesty.

ARTICLE II.

The contracting parties hereby engage to communicate each to the other, from time to time, lists of the persons who, within their respective dominions and territories, or before their diplomatic and consular officers, have declared their renunciation of naturalization, with the dates and places of making such declarations, and such information as to the abode of the declarants, and the times and places of their naturalization, as they may have furnished.

ARTICLE III.

The present Convention shall be ratified by Her Britannic Majesty, and by the President of the United States by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at Washington as soon as may be convenient.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Washington, the twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-one.

(L.S.) EDWD. THORNTON.
(L.S.) HAMILTON FISH.

ANNEX (A).

I, A.B. of (*insert abode*), being originally a citizen of the United States of America (*or a British subject*), and having become naturalized within the dominions of Her Britannic Majesty as a British subject (*or as a citizen within the United States of America*) do hereby renounce my naturalization as

a British subject (*or citizen of the United States*); and declare that it is my desire to resume my nationality as a citizen of the United States (*or British subject*).

(Signed) A.B.

Made and subscribed before me in (insert country or other subdivision, and state, province, colony, legation, or consulate), this day of 187 .

(Signed) E. F.,
Justice of the Peace.
(Or other title.)

(L.S.) EDWD. THORNTON.
(L.S.) HAMILTON FISH.

STATUTE OF THE UNITED KINGDOM, 1895.

Chapter 43.

An Act to amend the Naturalization Act, 1870, so far as respects children of naturalized British subjects in the service of the Crown resident out of the United Kingdom. (6th July, 1895.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of 33 & 34 Vict. c. 14. s. 10 as respects children of naturalized British subjects resident abroad.

1.—(1) The residence of a child of a naturalized British subject with his father while in the service of the Crown out of the United Kingdom, shall have, and be deemed always to have had, the same effect, for the purpose of subsection five of section ten of the Naturalization Act, 1870, as residence with such father in the United Kingdom.

(2) Subsection five of section ten of the Naturalization Act, 1870, shall have effect as if the words "or with such father while in the service of the Crown out of the United Kingdom" had been inserted therein after the words "part of the United Kingdom," and every copy of the Naturalization Act, 1870, hereafter printed may be printed accordingly.

Short title.

2. This Act may be cited as the Naturalization Act, 1895.

REVISED STATUTES OF CANADA.

Chapter 77.

An Act respecting Naturalization and Aliens.

SHORT TITLE.

1. This Act may be cited as the Naturalization Act. R.S., c. 113, s. 1. Short title.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,— Definitions.

(a) 'disability' means the disability of being an infant, lunatic, idiot, or married woman;

(b) 'officer in the diplomatic service of His Majesty' means an ambassador, minister, *chargé d'affaires,* secretary of legation, or any person appointed by such ambassador, minister, *chargé d'affaires,* or secretary of legation, to execute any duty imposed upon an officer in the diplomatic service of His Majesty by the *Naturalization Act, 1870,* passed by the Parliament of the United Kingdom;

(c) 'officer in the consular service of His Majesty' means and includes consul-general, consul, vice-consul or consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul or consular agent;

(d) 'county' includes a union of counties and a judicial district or other judicial division;

(e) 'alien' includes a statutory alien;

(f) 'statutory alien' means a natural-born British subject who has become an alien under this Act or any Act in that behalf;

(g) 'subject' includes a citizen, when the foreign country referred to is a republic;

(h) 'form' means a form in the schedule to this Act. R.S., c. 113, s. 2.

3. For the purposes of this Act the clerk of the peace of any county in Ontario shall be deemed to be the 'clerk' of the General Sessions of the Peace of that county, and the prothonotary of the Supreme Court of Nova Scotia for any county shall be deemed to be the 'clerk' of that court in relation to matters arising in or dealt with respect to such county. 2 E. VII., c. 23, s. 1; 3 E. VII., c. 38, s. 2. Clerk of certain courts defined.

RIGHTS OF PROPERTY OF ALIENS.

Real and personal property of aliens.

4. Real and personal property of any description may be taken, acquired, held and disposed of by an alien in the same manner, in all respects, as by a natural-born British subject. R.S., c. 113, s. 3.

Title thereto.

5. A title to real and personal property of any description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject. R.S., c. 113, s. 3.

Certain enactments not affected.

6. Nothing in the two last preceding sections shall qualify an alien for any office, or for any municipal, parliamentary, or other franchise, or to be the owner of a British ship; nor shall anything therein entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly conferred upon him. R.S., c. 113, s. 3.

Property transactions prior to July 4th, 1883, saved.

7. The provisions of the three last preceding sections shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the fourth day of July, one thousand eight hundred and eighty-three, or in pursuance of any devolution by law on the death of any person dying before the said date. R.S., c. 113, s. 3.

EXPATRIATION.

Declaration of alienage in cases within convention with a foreign country.

8. Whenever His Majesty has entered into a convention with any foreign state to the effect that the subjects of that state who are naturalized as British subjects may divest themselves of their status as British subjects, and whenever His Majesty, by order in council, passed under the third section of *The Naturalization Act, 1870,* enacted by the Parliament of the United Kingdom, has declared that such convention has been entered into by His Majesty, from and after the date of such order in council, any person originally a subject of the state referred to in such order, who has been naturalized as a British subject within Canada, may, within such limit of time as is prescribed in the convention, make a declaration of alienage, and from and after the date of his so making such declaration, such person shall, within Canada, be regarded as an alien, and as a subject of the state to which he originally belonged, as aforesaid. R.S., c. 113, s. 4.

Effect of such declaration.

Before whom such declaration may be made.

9. Any such declaration of alienage may be made,—

(a) in the United Kingdom, before any justice of the peace;

(b) elsewhere, in His Majesty's dominions, before any judge of any court of civil or criminal jurisdiction, or of any justice

justice of the peace, or of any other officer for the time being authorized by law in such place to administer an oath for any judicial or other legal purpose; and,

(c) out of His Majesty's dominions, before any officer in the diplomatic or consular service of His Majesty. R.S., c. 113, s. 5.

Declaration of alienage by persons being subjects of His Majesty by birth and subjects of a foreign state by law.

10. Any person who, by reason of his having been born within British dominions, is a natural-born subject of His Majesty, but who, at the time of his birth, under the law of any foreign state, was and still is a subject of such state, may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and, from and after the making of such declaration of alienage, such person shall, within Canada, cease to be a British subject. R.S., c. 113, s. 6.

Declaration of alienage by the child of a British subject.

11. Any person who is born out of British dominions of a father being a British subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall, within Canada, cease to be a British subject. R.S., c. 113, s. 6.

EFFECT OF NATURALIZATION ABROAD.

Alienage in Canada of British subject naturalized in a foreign state.

12. Any British subject who has, at any time before or at any time after the fourth day of July, one thousand eight hundred and eighty-three, when in a foreign state and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed, within Canada, to have ceased to be a British subject, and shall be regarded as an alien. R.S., c. 113, s. 7.

TAKING OATH.

Alien may subject to certain conditions take oaths and apply for certificate as a British subject.

13. Any alien who, within such limited time before taking the oaths or affirmations of residence and allegiance and procuring the same to be filed of record as hereinafter prescribed, as may be allowed by order or regulation of the Governor in Council, has resided in Canada for a term of not less than three years, or has been in the service of the Government of Canada or of any of the provinces of Canada, or of two or more of such governments, for a term of not less than three years, and intends, when naturalized, either to reside in Canada or to serve under the Government of Canada or the Government of one of the provinces of Canada, or two or more of such governments, may take and subscribe the oaths of residence and allegiance or of service and allegiance in form A and apply for a certificate in form B. R.S., c. 113, s. 8.

14.

Where and before whom such oaths may be taken.

14. The following persons shall be competent to administer such oath, namely:—

(a) A judge of a court of record in Canada;

(b) A commissioner authorized to administer oaths in any court of record in Canada;

(c) A commissioner authorized by the Governor General to take oaths under this Act;

(d) A justice of the peace of the county or district where the alien resides;

(e) A notary public;

(f) A stipendiary magistrate, or a police magistrate. R.S., c. 113, s. 9.

EVIDENCE OF RESIDENCE OR SERVICE.

Evidence of residence or service required.

15. The alien shall adduce, in support of such application, such evidence of his residence or service, and intention to reside or serve, as the person before whom he takes the oaths aforesaid requires; and such person, on being satisfied with such evidence, and that the alien is of good character, shall grant to such alien a certificate in form B. R.S., c. 113, s. 10.

PRESENTATION OF CERTIFICATE AND NOTICE.

Presentation of certificate.

16. Such certificate shall be presented,—

In Ontario.

(a) in Ontario, to the court of general sessions of the peace of the county in which the alien resides, or to the court of assize and *nisi prius* during its sittings in such county;

In Quebec.

(b) in Quebec, to any circuit court within the territorial limits of the jurisdiction of which the alien resides;

In Nova Scotia.

(c) in Nova Scotia, to the Supreme Court, during its sittings in the county in which the alien resides, or to the county court having jurisdiction in such county;

In New Brunswick.

(d) in New Brunswick, to the Supreme Court, during its sittings in the county in which the alien resides, or to the circuit court, as the case may be, in such county, or to the county court having jurisdiction in such county;

In British Columbia.

(e) in British Columbia, to the Supreme Court of British Columbia, during its sittings in the electoral district in which the alien resides, or to the court of assize and *nisi prius* during its sittings in such electoral district, or to the county court of such electoral district;

In Manitoba.

(f) in Manitoba, to the county court having jurisdiction where the alien resides, or, if there is no county court having jurisdiction there, then to the county court of the county nearest to his residence or the county court the place of holding which is nearest to his residence;

In Prince Edward Island.

(g) in Prince Edward Island, to the Supreme Court of Judicature, during its sittings in the county within which the alien resides, or to the court of assize and *nisi prius* during

during its sittings in such county, or to the county court of such county;

(h) in the province of Saskatchewan or Alberta, to a judge of the Supreme Court of the Northwest Territories sitting in chambers in the judicial district in which the alien resides, pending the abolition of that Court by the legislature of the province, and thereafter to a judge of such superior court as, in respect of the civil jurisdiction of the said Court is established for the province in lieu thereof; In Saskatchewan or Alberta.

(i) in the Yukon Territory, to the Territorial Court, during its sittings in the circuit within which the alien resides. 3 E. VII., c. 38, s. 1; 4 E. VII., c. 25, s. 1; 4-5 E. VII., c. 3, s. 16; c. 42, s. 16.

17. Except in the provinces of Saskatchewan and Alberta, when it is intended to present a certificate under the last preceding section, on behalf of any alien, notice in writing of such intention stating the name, residence and occupation or addition of such alien shall be given to the clerk of the court at least three weeks before the sittings thereof. Elsewhere.

2. The clerk shall post up in a conspicuous place in his office three weeks before such sittings, and keep posted there until such sittings are ended, a list showing the names, residences, and occupations or additions of all aliens as to whom due notice has been received by him of such intention. 3 E. VII., c. 38, s. 2. Posting up.

18. Except in the provinces of Saskatchewan and Alberta, at any time after the filing of any such notice and previous to the sittings of the court any person objecting to the naturalization of the alien may file in the office of the clerk an opposition in which shall be stated the grounds of his objections. 3 E. VII., c. 38, s. 2. Opposition to naturalization may be filed.

19. Except in the provinces of Saskatchewan and Alberta, presentation of such certificates shall be made in open court and on the first day of some general sittings of the court, and thereupon the judge shall cause the particulars of all such certificates to be openly announced in court, the name, residence, and occupation or addition of each applicant for naturalization being stated. Presentation of certificate in open court.

2. Where no opposition has been filed to the naturalization of an applicant, and no objection thereto is offered during the sittings, the court on the last day of the sittings shall direct that the certificate of the applicant be filed of record in the court. To be filed of record if no opposition.

3. If such opposition has been filed or objection offered the court shall hear and determine the same in a summary way, and shall make such direction or order in the premises as the justice of the case requires. 3 E. VII., c. 38, s. 2. Hearing and determination of opposition.

20.

Procedure in Saskatchewan or Alberta.

20. In the province of Saskatchewan or Alberta, the procedure with regard to such certificate shall be as follows:—

(a) Before its presentation to the judge, such certificate shall, pending the abolition of the Supreme Court of the Northwest Territories by the legislature of the province, be filed in the office of the clerk of that Court for the judicial district in which the alien resides, unless he resides in a portion of such district assigned to a deputy clerk, in which case it shall be filed in the office of such deputy clerk, and thereafter, in the office of the clerk for such district or, as the case may be, of the deputy clerk, of such superior court as, in respect of the civil jurisdiction of the said Supreme Court, is established for the province in lieu thereof;

(b) A copy of the certificate shall thereupon be posted up in a conspicuous place in the office of the clerk of the court, or of the deputy clerk, as the case may be, and shall remain so posted up for a period of not less than two weeks;

(c) At any time after such copy is first so posted up any one may file with the clerk of the court, or with the deputy clerk, as the case may be, a written notice of objection to the certificate of naturalization being granted, stating the grounds of such objection;

(d) Not later than three weeks after the certificate is so filed, the clerk of the court, or the deputy clerk, as the case may be, shall present to the judge, or transmit to him by registered letter, the certificate and all notices of objection filed with him, if any, with a certificate under his hand and the seal of the court that a copy of the certificate has been duly posted up in his office as above required, and, if no notice of objection has been filed with him, that such is the case ;

(e) Within one week following the receipt by the judge of the certificate and such other material, he shall hold a sitting in chambers, at which, if no notice of objection has been filed, and if the certificate appears to be regular and sufficient, he shall direct the issue to the alien of a certificate of naturalization, and, if any notice of objection has been received, or if the certificate is defective or otherwise open to objection, he shall decide such objection in a summary way, and shall make such direction or order as the justice of the case requires;

(f) The judge shall have power to adjourn the hearing of any such case from time to time. 4-5 E. VII., c. 25, s. 1; c. 3, s. 16; c. 42, s. 16.

Procedure in Northwest Territories.

21. In the Northwest Territories such certificate shall be presented to such authorities or persons as are prescribed by order or regulation of the Governor in Council, and thereupon such authority or person shall take such proceedings with respect to

to such certificate, and shall cause the same to be filed of record in such way as is prescribed by such order or regulation. R.S., c. 113, s. 12; 3 E. VII., c. 38, s. 3.

Certificate of naturalization.

22. The alien shall after the filing of such certificate be entitled to a certificate of naturalization in form C authenticated,—

(a) under the seal of the court, if such certificate has been presented to a court; or,

(b) if the certificate has been presented to an authority or person, as prescribed by order or regulation of the Governor in Council, in manner prescribed by such order or regulation. R.S., c. 113, s. 13.

If certificate of naturalization is on account of service.

23. The certificate granted to an alien who applies for naturalization on account of service under the Government of Canada or of any province or of any two or more of such Governments shall be filed of record in the office of the Secretary of State of Canada.

Issue.

2. After such filing, the Governor in Council may authorize the issue of a certificate of naturalization to such alien, in form D. R.S., c. 113, s. 14.

RIGHTS OF ALIENS NATURALIZED.

Rights of aliens so naturalized.

24. An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect. R.S., c. 113, s. 15.

SPECIAL CERTIFICATE.

Certificate of naturalization when nationality is doubtful.

25. A special certificate of naturalization, in form E, may, in manner aforesaid, be granted to any person with respect to whose nationality, as a British subject, a doubt exists.

2. Such certificate may specify that the grant thereof is made for the purpose of quieting doubts as to the rights of such person to be deemed a British subject.

Effect thereof.

3. The grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject. R.S., c. 113, s. 16.

CERTIFICATE

CERTIFICATE AS TO ALIENS NATURALIZED.

As to aliens naturalized before 4th July, 1883.

26. An alien naturalized previously to the fourth day of July, one thousand eight hundred and eighty-three, may apply for a certificate of naturalization under this Act.

Certificate.

2. Such certificate may be granted to such naturalized alien upon the same terms and subject to the same conditions upon which such certificate might have been granted if such alien had not been previously naturalized. R.S., c. 113, s. 17.

CERTIFICATE OF READMISSION.

Readmission of statutory alien into Canada.

27. A statutory alien may, upon the same terms and subject to the same conditions as are required in the case of an alien applying for a certificate of naturalization, except that residence in Canada for not less than three months shall be sufficient, apply to the proper court or authority or person in that behalf for a certificate in form F, hereinafter referred to as a 'certificate of admission to British nationality,' readmitting him to the status of a British subject within Canada. R.S., c. 113, s. 18; 3 E. VII., c. 38, s. 4.

Rights of such alien.

28. A statutory alien, to whom a certificate of readmission to British nationality within Canada has been granted, shall, from the date of the certificate of readmission, but not in respect of any previous transaction, resume his position as a British subject within Canada, with this qualification, that within the limits of the foreign state of which he became a subject, he shall not be deemed to be a British subject within Canada, unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty or convention to that effect. R.S., c. 113, s. 19.

PROVISIONS IN CASE OF CONVENTION WITH FOREIGN STATE.

Provision in case of certain convention by His Majesty with a foreign state.

29. When any foreign state has, before or after the fourth day of July, one thousand eight hundred and eighty-three, entered into a convention with His Majesty to the effect that the subjects of that state who have been naturalized as British subjects may divest themselves of their status as subjects of such foreign state, and, when such convention, or the laws of such foreign state require a residence in Canada of more than three years or a service under the Government of Canada, or of any of the provinces of Canada, or of two or more of such Governments, of more than three years, as a condition precedent to such subjects divesting themselves of their status as such foreign subjects, an alien being a subject of such foreign state, who desires to divest himself of his status as such subject, may, if at the time of taking the oath of residence or service, he has resided

How alien subject of

resided or served the length of time required by such convention or by the laws of the foreign state, instead of taking the oath showing three years' residence or service, take an oath showing residence or service for the length of time required by such convention or by the laws of the foreign state. R.S., c. 113, s. 20.

such state may obtain certificate of naturalization.

30. The certificate of naturalization granted to the alien under the last preceding section shall state the period of residence or service sworn to; and such statement shall be sufficient evidence of such residence or service in all courts and places whatsoever. R.S., c. 113, s. 20.

What certificate shall show, and its effect.

31. An alien who, either before or after the fourth day of July, one thousand eight hundred and eighty-three, has, whether under this Act or otherwise, become entitled to the privileges of British birth in Canada, and who is a subject of a foreign state with which a convention to the effect above mentioned has been entered into by His Majesty, and who desires to divest himself of his status as such subject, and who has resided or served the length of time required by such convention or by the laws of the foreign state, may take the oath of residence or service showing residence or service for the length of time required by such convention or by the laws of the foreign state, and apply for a certificate, or a second certificate, as the case may be, of naturalization under this Act. R.S., c. 113, s. 21.

As to aliens in such case who have become entitled to privileges of British birth in Canada.

STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

32. A married woman shall, within Canada, be deemed to be a subject of the state of which her husband is, for the time being, a subject. R.S., c. 113, s. 22.

Married woman.

33. A widow who is a natural-born British subject and who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during widowhood, obtain a certificate of readmission to British nationality, within Canada, as hereinbefore provided. R.S., c. 113, s. 23.

Widow, being a British subject by birth who has become an alien by marriage.

34. If the father, being a British subject, or the mother, being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who, during infancy, has become a resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall, within Canada, be deemed to be subject of the state of which the father or mother has become a subject, and not a British subject. R.S., c. 113, s. 24.

Children of British subjects who have become aliens.

35.

Children of aliens who have been admitted to British naturalization.

35. If the father, or the mother being a widow, has obtained a certificate of readmission to British nationality within Canada, every child of such father or mother who, during infancy, has become resident within Canada with such father or mother, shall be deemed to have resumed the position of British subject within Canada, to all intents. R.S., c. 113, s. 25.

If the parents have obtained certificates of naturalization.

36. If the father, or the mother being a widow, has obtained a certificate of naturalization within Canada, every child of such father or mother who, during infancy, has become resident with such father or mother within Canada, shall, within Canada, be deemed to be a naturalized British subject. R.S., c. 113, s. 26.

Act not to affect acquired rights of married women.

37. Nothing in this Act contained shall deprive any married woman of any estate or interest in real or personal property to which she became entitled before the fourth day of July, one thousand eight hundred and eighty-three, or affect such estate or interest to her prejudice. R.S., c. 113, s. 27.

REGULATIONS.

Regulations by Governor in Council as to—

38. The Governor in Council may make regulations respecting the following matters:—

Declarations. *(a)* The form and registration of declarations of British nationality;

Certificates of naturalization. *(b)* The form and registration of certificates of naturalization in Canada;

Certificates of readmission. *(c)* The form and registration of certificates of readmission to British nationality within Canada;

Alienage. *(d)* The form and registration of declarations of alienage;

Transmission of certain documents for purposes of this Act. *(e)* The transmission to Canada, for the purpose of registration or safe keeping or of being produced as evidence, of any declarations or certificates made in pursuance or for the purposes of this Act, out of Canada, or of any copies of such declarations or certificates, and of the originals or copies of oaths received under this Act out of Canada; also, of copies of entries of such oaths contained in any register kept out of Canada in pursuance or for the purposes of this Act;

Oaths. *(f)* The persons by whom the oaths may be administered under this Act;

Subscription. *(g)* Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested;

Registration. *(h)* The registration of such oaths;

Copies. *(i)* The persons by whom certified copies of such oaths may be given;

Proof. *(j)* The proof, in any legal proceedings, of such oaths;

(k)

(k) With the consent of the Treasury Board, the imposition and application of fees not fixed by this Act, in respect of any registration, or of the making or granting of any declaration or certificate, and the administration or registration of any oaths authorized by this Act. R.S., c. 113, s. 28. Fees.

39. Any regulation made by the Governor in Council under this Act shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act. R.S., c. 113, s. 29. Presumption as to regulations.

EVIDENCE.

40. Any declaration authorized to be made under this Act may be proved in any legal proceeding, by the production of the original declaration, or of any copy thereof certified to be a true copy by the clerk or acting clerk of the King's Privy Council for Canada, or by any person authorized by regulation of the Governor in Council to give certified copies of such declaration. Proof of declarations.

2. The production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned. R.S., c. 113, s. 30. Effect.

41. A certificate of naturalization or of readmission to British nationality may be proved in any legal proceeding by the production of any original certificate, or of any copy thereof certified to be a true copy by the clerk or acting clerk of the King's Privy Council for Canada, or by any person authorized by regulation of the Governor in Council to give certified copies of such certificate. R.S., c. 113, s. 31. Proof of certificates.

42. The statement of the period of residence or service in a certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever. R.S., c. 113, s. 31. Statement of residence.

43. Entries in any register authorized to be made in pursuance of this Act may be proved by such copies and certified in such manner as is directed by regulation of the Governor in Council, by the clerk or acting clerk of the King's Privy Council for Canada, or by the Secretary of State. Proof of entries of registration.

2. The copies of such entries shall be evidence of any matters by this Act or by any regulation of the Governor in Council authorized to be inserted in the register. R.S., c. 113, s. 32. Copies.

44. A copy of any certificate of naturalization may be registered in the land registry office of any county or district or registration division within Canada, and a copy of such registry, Registration of certificate in land registry office.

R.S., 1906.

try, certified by the registrar or other proper person in that behalf, shall be sufficient evidence of the naturalization of the person mentioned therein, in all courts and places whatsoever. R.S., c. 113, s. 33.

GENERAL.

Commissioner for administering oaths.

45. The Governor in Council may, from time to time, appoint commissioners to take and administer oaths under this Act. R.S., c. 113, s. 34.

As to acts done before naturalization.

46. If any British subject has, in pursuance of this Act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien. R.S., c. 113, s. 35.

Fee on issue of certificate by a court.

47. The clerk of the court and the persons or authorities by whom the certificate of naturalization is issued shall, for all services and filings in connection with such certificate, be entitled to receive, from the person naturalized, the sum of twenty-five cents and no more; and no further or other fee shall be payable for or in respect of such certificate. R.S., c. 113, s. 36.

And to registrar for recording it.

48. The registrar shall, for recording a certificate of naturalization, be entitled to receive from the person producing the same for registry, the sum of fifty cents, and a further sum of twenty-five cents for every search and certified copy of the same and no more. R.S., c. 113, s. 36.

As to aliens naturalized in Canada before July 4th, 1883.

49. Every person who, being by birth an alien, had, on or before the fourth day of July, one thousand eight hundred and eighty-three, become entitled to the privileges of British birth within any part of Canada, by virtue of any general or special Act of naturalization in force in such part of Canada, shall hereafter be entitled to all the privileges by this Act conferred on persons naturalized under this Act. R.S., c. 113, s. 37.

Act not to affect Act of U. C., 54 Geo. III., c. 9.

50. Nothing in this Act contained shall repeal or in any manner impair or affect,—

(a) the Act of the Legislature of Upper Canada, passed in the fifty-fourth year of the reign of His late Majesty King George the Third, intituled *An Act to declare certain persons, therein described, aliens, and to vest their estates in His Majesty;* or,

24 Vic. (Canada), c. 44.

(b) the Act of the Legislature of the late province of Canada, passed in the twenty-fourth year of the reign of Her late Majesty Queen Victoria, chapter forty-four and intituled *An Act respecting forfeited estates in Upper Canada;* or,

(c)

(c) any proceedings had under the said Acts; or,

(d) the Act of the Legislature of the late province of Canada, passed in the session held in the fourth and fifth years of the reign of Her late Majesty Queen Victoria, chapter seven, intituled *An Act to secure to, and confer upon, certain inhabitants of this Province, the civil and political rights of natural-born British subjects;* or, 4-5 Vic., c. 7

(e) the first, second or third sections of the Act of the said Legislature, passed in the twelfth year of the reign of Her late Majesty Queen Victoria, chapter one hundred and ninety-seven, intituled *An Act to repeal a certain Act therein mentioned and to make better provision for the naturalization of Aliens;* or, 12 Vic., c. 197, ss. 1, 2 and 3.

(f) the naturalization of any person naturalized under the said two last mentioned Acts, or either of them, or any rights acquired by such person or by any other person by virtue of such naturalization, all which shall remain valid and be possessed and enjoyed by such person respectively. R.S., c. 113, ss. 38-39. Nor the rights of those naturalized under them.

51. Every person who, being by birth an alien, did, prior to the first day of January, one thousand eight hundred and sixty-eight, take the oaths of residence and allegiance required by the laws respecting naturalization then in force in that one of the provinces now forming the Dominion of Canada, in which he then resided, shall, within Canada, be entitled to all the rights and privileges of a natural-born British subject conferred upon naturalized persons by this Act; and the certificate of the judge, magistrate, or other person before whom such oaths were taken and subscribed, shall be evidence of his having taken them; or, he may take and subscribe the oath in form G, before some judge, justice, or person authorized to administer the oaths of residence and allegiance under this Act, in the county or district in which he resides. R.S., c. 113, s. 40. As to those entitled to be naturalized before January, 1868, under the law of any province.

52. All aliens who had their settled place of abode,— Certain aliens entitled to privileges of British birth.

(a) in either of the late provinces of Upper Canada, or Lower Canada, or Canada, or in Nova Scotia or New Brunswick, on or before the first day of July, one thousand eight hundred and sixty-seven; or,

(b) in Rupert's Land or the Northwest Territories, on or before the fifteenth day of July, one thousand eight hundred and seventy; or,

(c) in British Columbia, on or before the twentieth day of July, one thousand eight hundred and seventy-one; or,

(d) in Prince Edward Island, on or before the first day of July, one thousand eight hundred and seventy-three;

and who are still residents of Canada, shall be deemed, adjudged, and taken to be, and to have been entitled to all the privileges

privileges of British birth within Canada as if they had been natural-born subjects of His Majesty. R.S., c. 113, s. 41.

Conditions therefor.

53. No such person referred to in the last preceding section, being a male, shall, however, be entitled to the benefit of this Act, unless he takes the oaths of allegiance in form A, and of residence in form H, before some justice of the peace or other person authorized to administer oaths under this Act. R.S., c. 113, s. 41.

Where the oath required shall be filed of record.

54. The oaths taken by any person, under the two last preceding sections shall be filed of record,—

(a) in the province of Ontario, with the clerk of the peace of the county in which such person resides;

(b) in the province of Quebec, with the clerk of the circuit court of the circuit within which such person resides;

(c) in Nova Scotia, with the prothonotary of the Supreme Court;

(d) in New Brunswick, with the clerk of the Supreme Court;

(e) in British Columbia, with the clerk of the Supreme Court;

(f) in Prince Edward Island, with the clerk of the Supreme Court of Judicature;

(g) in Manitoba, with the clerk of the Court of King's Bench, or with the clerk of the county court of the county in which such person resides;

(h) in the province of Saskatchewan or Alberta, with the clerk of the Supreme Court of the Northwest Territories pending the abolition of that Court by the legislature of the province, and thereafter with the clerk of such superior court of justice as in respect of the civil jurisdiction of the said Court is established for the province in lieu thereof;

(i) in the Yukon Territory, with the clerk of the Territorial Court;

(j) in the Northwest Territories, with such person or authority as is prescribed by order or regulation of the Governor in Council. R.S., c. 113, s. 42; 4-5 E. VII., c. 3, s. 16; c. 42, s. 16.

Effect of filing: fee for certificate and its effect.

55. Upon the oath being so filed, the person taking it shall be entitled to the benefit of this Act and of the privileges of British birth within Canada, and shall also, upon payment of a fee of twenty-five cents, be entitled to a certificate, in form I, from the person with whom the oaths have been filed.

Evidence of certificate.

2. The production of such certificate shall be *prima facie* evidence of the naturalization of such person under this Act, and that he is entitled to and enjoys all the rights and privileges of a British subject. R.S., c. 113, s. 42.

56.

56. No alien shall be naturalized within Canada, except under the provisions of this Act. R.S., c. 113, s. 43. Naturalization to be under this Act only.

RETURN TO THE SECRETARY OF STATE.

57. The clerk of every court which is, and the persons or authorities who are, required to grant certificates under this Act shall, on or before the fifteenth days of January and July in each year, make a return of the half years ending respectively with the thirty-first day of December and the thirtieth day of June next preceding the date of such returns, to the Secretary of State of Canada of all persons to whom certificates of naturalization or of readmission to British nationality have been granted by such court, person or authority, as the case may be, or who have taken the oath and been granted the certificates above referred to. 2 E. VII, c. 23, s. 2. Returns by clerks of courts.

58. Such returns shall set forth with respect to each such person,— Contents of such returns.

(a) his name, residence and addition, and his former residence and nationality;

(b) the nature of the certificate granted or oath taken;

(c) the date when and the place where the same were granted or taken; and,

(d) any other particulars which the Governor in Council may require. 2 E. VII., c. 23, s. 3.

59. Such return shall be accompanied by certified copies of each certificate granted during the half year. 2 E. VII., c. 23, s. 3. Certified copies of each certificate.

60. All returns made pursuant to this Act and all copies of certificates received with any such returns shall remain of record in the Department of the Secretary of State. 2 E. VII., c. 23, s. 5. Secretary of State to record returns.

61. There shall be prepared and kept in the Department of the Secretary of State two alphabetical lists of the persons appearing from such returns, and from the records of the said Department, to have been naturalized or readmitted to British nationality, one of which shall contain the names of persons naturalized or readmitted to British nationality prior to the fifteenth day of May, one thousand nine hundred and two, and the other, those of persons thereafter or who may henceforth be naturalized or readmitted to British nationality. 2 E. VII., c. 23, s. 5. Alphabetical lists.

62. The fees for the preparation and transmission of returns made pursuant to this Act may, from time to time, be fixed by the Governor in Council. 3 E. VII., c. 38, s. 6. Fees.

63. R.S., 1906.

Search.

63. Any person shall be entitled during the usual office hours of the said Department, and upon payment of such fees as may be prescribed by the Governor in Council, to have a search made of such lists, and of the returns and copies of certificates of record under this Act. 2 E. VII., c. 23, s. 6.

Certificates.

64. The Secretary of State, upon request, and upon payment of such fees as are so prescribed, shall issue certificates as to the details shown by such lists or such return with respect to any person whose name appears therein as having been naturalized or readmitted to British nationality, and furnish certified copies of or extracts from any matter of record in the Department under this Act. 2 E. VII., c. 23, s. 6.

PENALTIES.

Default in making returns.

Penalty.

65. Any person who refuses or neglects to make any return required of him by this Act, within the time limited therefor, is guilty of an offence and liable, upon summary conviction, to a penalty of fifty dollars. 2 E. VII., c. 23, s. 7.

False swearing or false affirmation.

Penalty.

66. Every person who wilfully swears falsely, or makes any false affirmation under this Act, shall, on conviction thereof, in addition to any other punishment authorized by law, forfeit all the privileges or advantages which he would otherwise, by making such oath or affirmation, have been entitled to under this Act; but the rights of other persons, in respect of any property or estate derived from or held under him, shall not thereby be prejudiced, unless such persons were cognizant of the false swearing or the making of the false affirmation at the time the title by which they claim to hold under him was created. R.S., c. 113, s. 44.

SCHEDULE.

A.

THE NATURALIZATION ACT.

Oath of Residence.

I, A. B., do swear (*or,* being a person allowed by law to affirm in judicial cases, do affirm) that, in the period of years preceding this date I have resided three (*or* five, *as the case may be*) years in the Dominion of Canada with intent to settle therein, without having been, during such three years (*or* five

five years, *as the case may be*) a stated resident in any foreign country. So help me God.

Sworn before me at
on the
day of } A. B.

R.S., c. 113, sch.

THE NATURALIZATION ACT.

Oath of Service.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm), that, in the period of years preceding this date, I have been in the service of the Government of Canada (*or* of the Government of the province of , in Canada, *or, as the case may be*) for the term of three years, and I intend, when naturalized, to reside in Canada (*or* to serve under the Government of *as the case may be*).

Sworn before me at
on the
day of } A. B.

R.S., c. 113, sch.

THE NATURALIZATION ACT.

Oath of Allegiance.

I, A. B., formerly of (*former place of residence to be stated here*), in (*country of origin to be stated here*), and known there by the name of (*name and surname of alien in his country of origin to be stated here*), and now residing at (*place of residence in Canada and occupation to be stated here*), do sincerely promise and swear (*or,* being a person allowed by law to affirm in judicial cases, do affirm) that I will be faithful and bear true allegiance to His Majesty King Edward VII. (*or reigning sovereign for the time being*) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Dominion of Canada, dependent on and belonging to said Kingdom, and that I will defend Him to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against His Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to His Majesty,

R.S., 1906.

Majesty, His heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Him or any of them; and all this I do swear (*or* affirm) without any equivocation, mental evasion or secret reservation. So help me God.

Sworn before me at this day of } A. B.

4-5 E. VII., c. 25, s. 2.

B.

THE NATURALIZATION ACT.

Certificate.

I, C. D., (*name and description of the person before whom the oaths have been taken*) do certify that A. B., an alien, (*describing him as formerly of such a place, in such a foreign country, and now of such a place in Canada, and adding his occupation or addition*) on the day of subscribed and took, before me, the oaths (*or* affirmations) of residence and allegiance (*or* service and allegiance, *as the case may be*) authorized by the thirteenth section of the Naturalization Act, and therein swore (*or* affirmed) to a residence in Canada (*or* service, etc.), of years; that I have reason to believe, and do believe, that the said A. B., within the period of years preceding the said day, has been a resident within Canada for (three *or* five, *as the case may be*) years, (*or* has been in the service of the Government of Canada for three years, *or as the case may be*), that the said A. B. is a person of good character, and that there exists, to my knowledge, no reason why the said A. B. should not be granted all the rights and capacities of a natural-born British subject.

Dated at , the day of

C. D.

If the above certificate is applied for by a person, with respect to whose nationality a doubt exists, and who desires a special certificate of naturalization under section twenty-five, add the following:—

'I further certify that the said A. B. has doubts as to his nationality as a British subject, and desires a special certificate of naturalization under section twenty-five of said Act.'

If

If the above certificate is applied for by a person previously a natural-born British subject, but who became an alien by naturalization, an appropriate statement to that effect should be inserted in the certificate.

R.S., c. 113, sch.; O.C.'s, Dec. 21, 1903, and Nov. 3, 1905.

C.

THE NATURALIZATION ACT.

Certificate of Naturalization.

Dominion of Canada,
Province of

In the *(name of court)* Court of

Whereas formerly of
(name of country) now of
in the province of (*occupation*)
has complied with the several requirements of the Naturalization Act, and has duly resided in Canada for the period of years;

And whereas the particulars of the certificate granted to the said under the fifteenth section of the said Act have been duly announced in court, and thereupon by order of the said court, the said certificate has been filed of record in the same pursuant to the said Act: (¶)

This is therefore to certify to all whom it may concern, that under and by virtue of the said Act has become naturalized as a British subject, and is, within Canada, entitled to all political and other rights, powers and privileges, and subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign state of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (*or* citizen) of that state, in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under the seal of the said court this day of one thousand nine hundred and

A. B.,
Judge, Clerk (or other proper officer of the Court).

This form may be altered so as to apply to the provinces of Saskatchewan and Alberta and the Yukon Territory.

R.S., c. 113, sch.; O.C.'s, 21st Dec., 1903, and 3rd Nov., 1905.

D.

THE NATURALIZATION ACT.

Certificate of Naturalization to a Person after Service under Government.

Whereas A. B., of (*describing him, and adding his occupation or addition*), has complied with the several requirements of the Naturalization Act, and has been in the service of the Government of Canada (*or as the case may be*) for a term of not less than three years, and intends, when naturalized, to reside in Canada (*or* to serve under the Government of , *as the case may be*); and whereas the certificate granted to the said A.B., under the fifteenth section of the said Act, has been duly filed of record in the office of His Majesty's Secretary of State of Canada, pursuant to the said Act; and whereas the Governor in Council has duly authorized the issue of this certificate of naturalization: This is, therefore, to certify to all whom it may concern that under and by virtue of the said Act, the said A. B. has become naturalized as a British subject and is, within Canada, entitled to all political and other rights, powers and privileges, and subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject, unless he has ceased to be a subject (*or* citizen) of that state in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under my hand, this day of

Secretary of State of Canada.

R.S., c. 113, sch.

E.

THE NATURALIZATION ACT.

Special Certificate of Naturalization to a person with respect to whose Nationality a doubt exists.

Follow Form C down to the sign ¶—then add:

And whereas the said A. B. alleges that he is a person with respect to whose nationality as a British subject a doubt exists, and this certificate is issued for the purpose of quieting such doubts, and the application of the said A. B. therefor and the issuing thereof shall not be deemed to be any admission that the said A. B. was not heretofore a British subject—(*then continue the rest of form C to the end*).

Form D to be altered in a similar way when necessary.

R.S., c. 113, sch.

F.

F.

THE NATURALIZATION ACT.

Certificate of Readmission to British Nationality.

Dominion of Canada,
Province of

In the (*name of court*) court of

Whereas formerly of (*name of country*) now of in the province of (*occupation*) who alleges that he was a natural-born British subject and that he became an alien by being naturalized as a subject (*or* citizen) of has complied with the several requirements of the Naturalization Act and has duly resided in Canada for the period of at least three months. And whereas the particulars of the certificate granted to the said under the fifteenth section of the said Act have been duly announced in court; and thereupon by order of the said court, the said certificate has been filed of record in the same pursuant to the said Act: This is therefore to certify to all whom it may concern, that, under and by virtue of the said Act the said from the date of this certificate, but not in respect of any previous transaction, is readmitted to the status of a British subject, and is, within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign state of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject, unless he has ceased to be a subject (*or* citizen) of that state, in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under the seal of the said court this day of one thousand nine hundred and

A. B.,
Judge, Clerk (or other proper officer of the Court.)

R.S., c. 113, sch.; 3 E. VII., c. 38, s. 5; O.C.'s, 21st Dec. and 3rd Nov., 1905.

G.

THE NATURALIZATION ACT.

I, A. B., of , do swear (*or* affirm) that on or about the day , one thousand eight hundred and , at , in the (county, *or as the case*

case may be), of , in the province of , I did take and subscribe before (*a judge, magistrate or other person, naming him*) the oaths (*or* affirmations) of residence and allegiance required by the laws respecting the naturalization of aliens then in force in the said province. So help me God.

A. B.

Sworn to before me at , on }
the day of , 19 . }

R.S., c. 113, sch.

H.

THE NATURALIZATION ACT.

I, A. B., of , do swear (*or* affirm) that I had a settled place of abode in Upper Canada (Lower Canada, Nova Scotia *or* New Brunswick, *as the case may be*), on the first day of July, A.D. 1867 (*or* in Rupert's Land or the Northwest Territories, on the fifteenth day of July, A.D. 1870), (*or* in British Columbia, on the twentieth day of July, A.D. 1871), (*or* in Prince Edward Island, on the first day of July, 1873), and I resided therein with intent to settle therein; and I have continuously since resided in the Dominion of Canada. So help me God.

A. B.

Sworn before me at , on }
the day of 19 . }

R.S., c. 113, schedule.

I.

THE NATURALIZATION ACT.

I hereby certify that A. B., of , has filed with me as clerk of the peace (*or as the case may be*) the oath (*or* affirmation) of which the following is a copy:—

(Copy the Oath of Affirmation.)

This certificate is issued pursuant to the fifty-fifth section of the Naturalization Act, and is to certify to all to whom it may concern that

Follow Form C.

R.S., c. 113, schedule.

STATUTES OF CANADA.

6-7 EDWARD VII.

Chapter 31.

An Act to amend the Naturalization Act.

[*Assented to 30th January, 1907.*]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as *The Naturalization Amendment Act, 1907.*

Naturalization of persons already naturalized in another part of the empire.

2. Any person resident in Canada, or in the service of the Government of Canada or of any province of Canada, who has obtained a certificate or letters of naturalization in the United Kingdom, or in any part thereof, or in any British colony or possession, which certificate or letters remains or remain in full force and effect, and who desires to be naturalized in Canada may, if he intends when naturalized either to reside in Canada or to serve under the Government of Canada or the government of any such province, apply for a certificate of naturalization in manner hereinafter prescribed, without having complied with the condition as to residence required under section 13 of *The Naturalization Act*, chapter seventy-seven of the Revised Statutes, 1906.

R.S., c. 77, s. 13.

Oaths and evidence in support of such application.

3. The applicant shall take and subscribe, before some person competent to administer oaths under section fourteen of the said Act, the oath of allegiance, in form A in the schedule to the said Act, and one of the oaths, forms 1 and 2 in the schedule to this Act, and shall produce to such person his certificate or letters of naturalization aforesaid, and adduce, in support of his application, such evidence of his residence or service, and intention to reside or serve, as such person requires, and such person, on being satisfied with such evidence and that the applicant is of good character, shall grant to him a certificate in form 3 in the schedule of this Act.

Certificate.

4.

Application of R.S., c. 77, ss. 16-23

4. The provisions of sections sixteen to twenty-three of the said Act with regard to the presentation and filing of the certificate in form B and the proceedings thereupon and with respect thereto shall, *mutatis mutandis*, and except as hereinafter provided, apply to the presentation and filing of the certificate granted under the last preceding section, and the proceedings thereupon and with respect thereto.

Proof of previous naturalization.

5. There shall in such cases be presented to the court, or to the authority or person prescribed under section twenty-one of the said Act, together with the certificate in form 3, the certificate or letters of naturalization aforesaid.

Form of certificate.

6. The certificate of naturalization to be granted to the applicant may be in form 4 in the schedule to this Act.

SCHEDULE.

Form 1.

The Naturalization Amendment Act, 1907.

Oath of Residence.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm) that I have obtained in the United Kingdom of Great Britain and Ireland (*or as the case may be*) a certificate (*or* letters) of naturalization dated
which I now produce and which is (*or* are), to the best of my knowledge and belief, in full force and effect; that I desire to be naturalized in Canada; that I now reside in Canada, and that I intend, when naturalized, to continue to reside therein.

Sworn before me at
on the
day of 19 .

Form 2.

The Naturalization Amendment Act, 1907.

Oath of Service.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm), that I have obtained in the United Kingdom of Great Britain and Ireland (*or as the case may be*) a certificate (*or* letters) of naturalization, dated ,
which I now produce, and which is (*or* are), to the best of my knowledge and belief in full force and effect; that I desire to be naturalized in Canada; that I am now in the service of the Government of Canada (*or* of the government of the province of

of , in Canada), and that I intend, when naturalized, to reside in Canada (*or* to serve under the government of , *(as the case may be).*

Sworn before me at
on the
day of 19 .

FORM 3.

The Naturalization Amendment Act, 1907.

Certificate.

I, C. D., (*name and description of the person before whom the oaths have been taken*) do certify that A. B., a British subject formerly of (*country of origin*), who was naturalized as a British subject in as testified by certificate (*or* letters) of naturalization, dated , and produced before me, and now of , in the province of , (*occupation or addition*) on the day of 19 , subscribed and took, before me, the oaths (*or* affirmations) of residence and allegiance (*or* service and allegiance, *as the case may be*) prescribed by section 3 of *The Naturalization Amendment Act, 1907*; that I have reason to believe, and do believe, that the said A. B. is a resident of Canada (*or* is in the service of the Government of Canada, *or* of the province of , in Canada) that the said A. B. intends, when naturalized, to continue to reside in Canada (*or* to serve under the Government of , *as the case may be*); that the said A. B. is a person of good character, and that there exists, to my knowledge, no reason why the said A. B. should not be granted the rights and capacities in Canada of a natural born British subject.

Dated at , the
day of 19 .

FORM 4.

Certificate of Naturalization.

Dominion of Canada,
Province of .

In the (*name of court*) Court of

Whereas formerly of (*name of country of origin*) and a British subject by naturalization, obtained within the (*as the case may be*), (*occupation or addition*), has taken the oath of residence (*or* service) prescribed by the third section

of *The Naturalization Amendment Act, 1907*, and has otherwise complied with the several requirements of the said Act, and whereas the particulars of the certificate granted to the said under the fourth section of the said Act have been duly announced in court, and thereupon by order of the said court the said certificate has been filed of record in the same pursuant to the said Act; this is, therefore, to certify to all to whom it may concern that, under and by virtue of *The Naturalization Act* and of the said Amendment Act, has become naturalized as a British subject, and is, within Canada, entitled to all political and other rights, powers and privileges, and subject to all obligations to which a natural born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign state of which he was a subject (*or* citizen) previous to his naturalization in aforesaid, be deemed to be a British subject unless he has ceased to be a subject (*or* citizen) of that state, in pursuance of the laws thereof, or in pursuance of a treaty or condition to that effect.

Given under the seal of the said court this day of , one thousand nine hundred and

Judge (*or clerk or other proper officer of the court*).

NOTE.—This form may be altered so as to apply to the Provinces of Saskatchewan and Alberta and the Yukon Territory.

WARRANT OF APPOINTMEMT.

I hereby nominate and appoint—

Sir KENELM EDWARD DIGBY, K.C.B., Permanent Under Secretary of State, Home Department (Chairman);

The Honourable FRANCIS HYDE VILLIERS, C.B., Assistant Under Secretary of State, Foreign Office;

Sir DENNIS FITZPATRICK, K.C.S.I., a member of the Council of the Secretary of State for India;

WILLIAM EDWARD DAVIDSON, Esquire, C.B., Q.C., Legal Adviser to the Foreign Office; and

HUGH BERTRAM COX, Esquire, Legal Assistant Under Secretary of State, Colonial Office;

to be a Committee to report to me upon the doubts and difficulties which have arisen in connexion with the interpretation and administration of the Acts relating to Naturalization, and to advise whether legislation for the amending of those Acts is desirable, and, if so, what scope and direction such legislation should take.

I further appoint WILLIAM WHEELER, Esquire, of the Home Office, to be Secretary to the said Committee.

(Signed) M. W. RIDLEY,
One of Her Majesty's Principal Secretaries of State.

WHITEHALL, 9th February 1899,

Naturalization Acts Committee of Inquiry.

NATURALIZATION LAWS COMMITTEE.

REPORT.

To the Right Hon. Charles Thomson Ritchie, M.P., His Majesty's Principal Secretary of State for the Home Department.

24th JULY 1901.

SIR,

Introductory subject matter of reference and short account of proceedings.

1. On the 9th February 1899, your predecessor in office, Secretary Sir Matthew White Ridley, commissioned us to report to him upon the doubts and difficulties which have arisen in connexion with the interpretation and administration of the Acts relating to Naturalization, and to advise whether legislation for the amending of those Acts is desirable, and, if so, what scope and direction such legislation should take. We have now the honour to report to you the result of our inquiry.

In dealing with the subject referred to us we have had to consider two distinct questions, how far the existing law requires elucidation, and in what respects and to what extent it requires amendment and extension. On the first point—the doubts as to the interpretation of the present law—we have been at a certain disadvantage, inasmuch as the subject of Nationality, though of great importance, is one which, as it happens, is rarely brought before the Courts, and consequently there is but little assistance to be obtained from judicial decisions. Questions, however, frequently arise in one form or another in the administration of the affairs—Domestic, Foreign, Colonial, or Indian—of the Executive Government. We have had before us the records of the various matters relating to the subject which, during the last 30 years and more, have been considered by one or other of the following Public Departments, viz., the Home, Foreign, Colonial, War, and India Offices; and the Admiralty, Board of Trade, and the Civil Service Commission. We have also had the advantage of the able assistance of Sir T. Godfrey Carey (Bailiff of Guernsey), Mr. W. H. Venables Vernon (Bailiff of Jersey), and Mr. George A. Ring (Attorney-General of the Isle of Man), on the questions specially affecting their respective provinces, and Professor Westlake, K.C., and Professor A. V. Dicey, K.C., have been good enough to give us their valuable counsel on certain points on which we thought it desirable to consult them. Further we have had before us the various laws in force in the different parts of His Majesty's Dominions regulating the conditions requisite for

conferring upon aliens the rights of British subjects within the limits of the territories governed by such laws; also the Report of the Select Committee which considered the subject in 1843, and the Report of the Royal Commission which dealt with it in 1869, both of which reports, together with their Appendices, contain much material which is still of practical importance.

Status of British subject.

2. The law relating to Naturalization is concerned mainly with the conditions under which the rights, privileges, and duties constituting the status of a British subject are acquired and lost. Persons are either invested with that status at the moment of birth or subsequently acquire it under the operation of Statute Law. The rights and privileges which constitute the status of a British subject are mainly the political rights and the capacities for the acquisition and holding of property mentioned later in this report; and, what are perhaps of still greater practical importance, those personal rights and privileges which a British subject carries with him into foreign countries. The principal of these are (1) privilege of protection, subject to any paramount obligation which he may be under to any other State of which he is also a subject or citizen; (2) the right and liability to become a party to proceedings in British Consular Courts established under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37.); (3) the right to be married in foreign countries under the provisions of the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23.). On the other hand, there are special liabilities imposed on British subjects for acts committed in foreign countries. A British subject is amenable to British Courts for treason (35 Hen. VIII. c. 2.), for murder or manslaughter committed in a foreign country (24 & 25 Vict. c. 100. s. 9), and for bigamy (24 & 25 Vict. c. 100. s. 5). The law is the same with regard to certain offenses under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60.), and the Explosive Substances Act (46 & 47 Vict. c. 3. s. 3). In some parts of His Majesty's Dominions, especially in British India, the liability of a British subject for offenses committed outside the limits of the Possession is much more extensive. There are also contained in most treaties of Extradition special provisions affecting the surrender of the subjects of the country from which the surrender is demanded.

Effect of naturalization.

3. Upon naturalization an alien becomes, speaking generally, invested with all the rights and capacities, and subject to all the obligations and liabilites of a British subject. Some differences, however, still exist between the status of a naturalized and of a natural-born subject, the more important of which will be noticed in the course of this report. We think that as far as possible these differences should be abolished.

Double allegiance.

4. The above brief indication of the rights and privileges acquired by, and the duties and obligations imposed upon, an

alien by his naturalization as a British subject is enough to show the expediency of avoiding, as far as possible, the occurrence of cases of double nationality, or, in other words, of endeavouring as far as possible to bring about that a person who acquires British nationality shall thereupon cease to be the subject of the country to which he previously belonged. Our law makes provision for the case of a British subject becoming a subject of a foreign State by his own act. This will be dealt with later in this report. But it is obviously impossible for our law to provide that a person on becoming a British subject shall cease to be the subject of any foreign State. Whether or not naturalization as a British subject is attended with this result must depend upon the law of the country of which the naturalized person was a subject immediately prior to his naturalization.

The occurrence of cases of double nationality acquired at birth is due mainly to the fundamental difference which exists between those countries whose law is derived mainly from feudal principles, and those countries whose law comes more directly from Roman sources, the former regarding the place of birth as the determining factor in constituting the relation of Sovereign and subject, while the latter look to the nationality of the parent, and disregard (more or less), the place of birth. Although the Statute Law of most countries has introduced certain modifications of each of these principles, the difference springing from the original sources of the system of law still remains. To guard effectively against the occurrence of cases of double nationality would require the assimilation in this respect of all the various systems of law prevailing in civilized communities, an ideal which, however desirable, is not likely to be realized.

It has been strongly urged[1] that, in order to bring the law of this country into harmony with that of most other European nations, the Legislature should abandon the principle that the mere fact of birth within the dominions confers British nationality. With regard to naturalization, something might be done by conventions with other countries to faciliatate the abandonment of a claim to retain as subjects persons who become naturalized in the other contracting State. An attempt to pave the way for conventions with other nations was made in the Naturalization Act, 1870. No effective steps, however, have hitherto been taken in this direction. This subject will be referred to later in this report. It has also been suggested that the Secretary of State, in the exercise of his discretion in granting certificates of naturalization, might have regard to the consideration whether or not the applicant would, on becoming a British subject, be divested of his prior nationality. This suggestion is, we think, worthy of attention, though we

[1] *See* Memoranda by Lord Bramwell, Mr. Montague Bernard, and Sir William Harcourt: Report of Royal Commission of 1869, pp. XI, XV, and Sir A. Cockburn—Nationality, p. 214.

recognise that there would be serious practical difficulties in giving general effect to it. We do not think there should be any interference by legislation with the absolute discretion of the Secretary of State.

Acquisition of nationality. By birth.

5. Leaving these general considerations, we proceed to state briefly the present state of the law of this country whereby the rights and duties of a British subject are acquired and lost. That law consists partly of Common Law and partly of Statute Law. To the Common Law belongs the fundamental principle that any person who is born within His Majesty's Dominions is from the moment of his birth a British subject, whatever may be the nationality of either or both of his parents, and however temporary and casual the circumstances determining the locality of his birth may have been.

Indelible at Common Law.

6. The Common Law regarded the status thus acquired as indelible. "*Nemo potest exuere patriam*" was the rule of the Common Law. The Act of 1870 altered this rule by providing means for terminating in certain cases and under certain conditions the status of a British subject. These provisions will be dealt with later in this report.

This enactment diminishes the force of the objections, above referred to, which have been raised to the principle that birth within the British Dominions confers British nationality. The consideration of the expediency of modifying the Common Law in this respect is hardly within the terms of the reference to us; but if it were we should be disposed to agree with the views of the majority of the Royal Commissioners of 1869, and on the whole should not be prepared to suggest any alteration of the law. Evidence as to the place of birth affords in most cases a simple and easy proof of British nationality for which it would be difficult to find a satisfactory substitute.

Exceptions to rule.

7. The exceptions to the Common Law rule that British nationality is determined by the place of birth are few, and if carefully examined are not exceptions at all, so far as the principle is concerned. The rule really is that all persons born "within the ligeance," are subjects of the Crown. Consequently the child of an alien enemy born in a part of His Majesty's Dominions which is at the time in hostile occupation, is not a British subject. Again, the child born within the British Dominions of an ambassador or other diplomatic agent accredited to the Crown by a foreign Sovereign is not a British subject. The limits of this latter exception have not been exactly ascertained.

Nationality resulting from conquest or cession.

8. The acquisition of British nationality as a consequence of conquest or cession of territory lies beyond the scope of this present report.

Acquisition by parentage.

9. With the exception of the case of the King's son,[1] who seems to be recognised by the Common Law as a British subject, wherever born, the acquisition of the status of a British subject by parentage rests on Statute Law. A person whose father or paternal grandfather was born within His Majesty's Dominions is deemed a natural-born British subject, although he himself was born abroad. It is to be observed that it is not accurate to say that the son of a natural-born British subject is in every case himself a British subject. The effect of the statutes, of which the above rule is the result, is that either the father or the paternal grandfather must have been actually born within His Majesty's Dominions. The Statutes referred to are 25 Edw. III., Stat. 2; 7 Anne c. 5. s. 3; 4 Geo. II. c. 21. s. 1; 13 Geo. III. c. 21.

Recommendation.

10. We suggest, though the question does not fall strictly within the terms of the reference to us, that these provisions should be repealed and the law consolidated. We think the opportunity might be taken to act on the recommendation of the Royal Commission of 1869, and that it would be desirable to limit the transmission of British nationality to the first generation, by enacting that no person born out of the Dominions of the Crown should be a British subject unless his father had been born within the Dominions of the Crown and was also at the time of the birth of that person a British subject. A recommendation as to the children of a naturalized British subject born out of the Dominions will be found later in this report. Some question has arisen whether the law as laid down in the above statutes applies throughout His Majesty's Dominions. We think that doubt should be removed, and the law, with the suggested modification, made of universal application.

British Dominions.

11. A question of some difficulty arises here which ought not to be passed over altogether without notice. It is this:

In applying the principle that every person born within the British Dominions is invested with British nationality, what is the exact meaning and extent of the expression "British Dominions"? Is it applicable only to those countries which form part of British territory, or does it include also some or all of the countries wherein His Majesty exercises jurisdiction or authority of a more or less extensive character, such as Protectorates or Spheres of Influence? It seems to us that the principle can apply only to those countries which have become portions of British territory by conquest, cession, or occupation, and that it does not apply to countries which do not form any portion of British territory, however large and extensive may be the powers of administration and jurisdiction possessed by the Crown therein, "by treaty, capitulation, grant, usage, suffer-

[1] Perhaps there is also the case of the child, born abroad, of an ambassador or other diplomatic agent accredited to a foreign court. *See* Calvin's case, 2 State Trials, 585.

ance, or other lawful means." (Foreign Jurisdiction Act, 1890, 53 & 54 Vict. c. 37. s. 1.)

Status of persons born on board ship.

12. To the category of persons who are British subjects by reason of their birth having taken place within His Majesty's Dominions must be added those who are born on board a British ship. Some doubt exists as to the extent of this rule. There seems to be no doubt that a person is a natural-born British subject who is (*a*) born on board a British ship of war, wherever such ship may be; (*b*) born on board a British merchant vessel on the high seas. The principal questions which have been raised are (1) whether a person born on board a British merchant vessel in a port of a foreign state, or in other foreign waters, is a British subject; (2) whether a person born on board a foreign ship in British territorial waters, or within the body of a county, is a British subject. We think it important that the law in this respect should be declared, and we consider that the simplest rule would be that a person born on a British ship in foreign waters should be a British subject, but that a person born on board a foreign ship should not be deemed to be a British subject merely because the ship was at the time of his birth in British waters.

Naturalization.

13. We now come to the consideration of the questions which form the main subject of the reference to us, namely, the present state of the law relating to the acquisition, loss, and re-acquisition, of British nationality, and whether any and what amendments in that law should be recommended.

By Act of Parliament.

14. Prior to the Act of 1844, 7 & 8 Vict. c. 66., the only means by which an alien could acquire any of the distinctive rights of a British subject were by special Act of Parliament or by letters of denization. The passing of the Act of 1844, and the fuller powers given by the Act of 1870, rendered the recourse to these methods less frequent. Special Acts of Parliament conferring British nationality are, however, still from time to time passed. Instances have occurred in which such Acts have been so imperfectly drafted as to give rise to questions of great difficulty and to cause much disappointment, especially by the absence of provisions for the naturalization of the children of the naturalized person. It must be borne in mind that strong objection in point of principle has been made on more than one occasion in Parliament to the passing of special Acts of Naturalization. We think that there will probably be even less occasion than there is at present for passing these special Acts, if a simplified and somewhat extended form of naturalization is granted in accordance with our recommendations. We suggest, however, that in order to secure that such special Acts should confer the rights which are contemplated, the Standing Orders of the Houses of Parliament should include provisions for embodying in private Acts of naturalization the main enactments of the general law, either under the Act of

1870 or under the new legislation which we recommend should supersede that statute. In this way the rights and duties of persons naturalized by special Act of Parliament and of those dependent on them would be made in all respects identical with those of persons naturalized by the certificate of the Secretary of State.

Denization.

15. We think there should be no alteration in the law as regards denization. The grant of any of the rights of a British subject by letters of denization is an ancient prerogative of the Crown; and though there is seldom occasion to resort to it at the present day, we think it ought to be preserved as it now is by section 13 of the Naturalization Act 1870.

By certificate of Secretary of State, 7 & 8 Vic. c. 66.

16. Naturalization by certificate of the Secretary of State was introduced in 1844 by the Act to amend the laws relating to aliens, 7 & 8 Vict. c. 66. The only condition imposed by that Act was that the applicant should come to reside in some part of Great Britain or Ireland with intent to settle therein. The applicant was required to present a memorial stating his age, profession, trade, or other occupation, and the duration of his residence in Great Britain or Ireland, and all other grounds on which he sought to obtain any of the rights and capacities of a natural-born British subject. The Act made it the duty of the Secretary of State to inquire into the circumstances of each case, to consider the memorial, and the grant or refusal of the certificate was in his discretion. In 1856 the Secretary of State was advised that it would be lawful to insert in certificates of naturalization a clause to the effect that such certificates were granted upon condition that the grantees should continue to reside permanently in the United Kingdom, and that the certificates should be determinable on the grantee ceasing so to reside. This advice was acted on, but the practice of granting conditional certificates of Naturalization was disapproved by the Royal Commissioners of 1869 and ceased upon the repeal of the Act of 1844 by the Act of 1870. The Secretary of State has been advised that a certificate under the latter Act is not revocable on the ground of having been obtained by fraud, and that it is not competent for him to annex any condition, as to residence or otherwise, providing for the avoidance of the certificate for breach of the condition. In a later part of our report we deal with the question whether it is desirable that some provision should be made for the avoidance or determination of a certificate.

p. x. of Report.

Naturalization under Act of 1870.

17. The main amendments of the law effected by the Act of 1870 were:—

(1.) Removal of the restrictions upon the acquisition and holding of real and personal property by aliens in the United Kingdom, except property in British ships.

(2.) Requirement, as a condition of a grant of a certificate of naturalization, of residence for five years in

the United Kingdom, or of service under the Crown for the same period, and of intention of continuing so to reside or serve after naturalization.

(3.) Limitation of the principle that British nationality is indelible (*a*) by permitting a natural-born British subject, who also at his birth became a subject of a foreign State, to divest himself of British nationality; (*b*) by making the loss of British nationality a necessary and immediate consequence of voluntary naturalization in a foreign country.

(4.) Detailed provisions as to the effect of naturalization or loss of nationality by the husband or father upon the status of the wife and children.

(5.) Provisions for the re-admission or re-naturalization of a person who had lost his British nationality.

Reasons for application for naturalization.

18. In considering the question expressly referred to us, "the doubts and difficulties which have arisen in connexion "with the interpretation and administration of the Acts relat- "ing to naturalization," and the desirability of their amendment, it is important to bear in mind the principal reasons which operate to induce aliens to apply for admission to British nationality.

Incapacity of alien to hold property.

19. The reason which formerly afforded the chief motive for becoming a British subject was the incapacity of aliens to hold real property and some descriptions of personal property. This incapacity, as already stated, no longer exists except in the case of British ships. The disability was partially removed by the Act of 1844 and entirely, with the above exception, by the Act, of 1870.

Political disqualification of aliens.

20. An alien is incapable of being a member of the Privy Council, or of either House of Parliament, of holding any municipal office, or of voting at Parliamentary or municipal elections, or of enjoying any office or place of trust either civil or military. A considerable proportion of the applications for naturalization made by persons who intend to continue to reside in this country are made for the purpose of obtaining the removal of these disqualifications.

Recommendations.

21. In this connexion we may observe that the provisions of Section 3 of the Act of Settlement (12 & 13 Will. III, chapter 2) prohibiting a naturalized alien from being a member of the Privy Council or of either House of Parliament still remain on the Statute Book; although, so far as they relate to persons naturalized under the Act of 1870, they are practically superseded by Section 7 (3) of that Statute. We think that so much of Section 3 of the Act of Settlement as is referred to above should be expressly repealed, with regard to all naturalized persons.

Commissions in army and navy.

22. Speaking generally, commissions in the army or navy are not given to aliens, nor are aliens admitted to Civil Service examinations. It is frequently the case that a parent desires naturalization or re-admission to British nationality, mainly for the purpose of removing the disqualification of the children, who, if they reside with the parent, will at once become naturalized with him.

Protection and rights of British subjects in foreign countries.

23. It also often happens that an alien residing in this country desires naturalization for himself or his children in order that he or they may obtain the protection accorded in a foreign country to a British subject. The belief, usually mistaken, that naturalization as a British subject protects a person against compulsory military service in a country to which he still owes allegiance, is frequently a reason for desiring this protection. The right to the benefit and the liability to the obligation of the provisions of the Foreign Jurisdiction Act, 1890, and the Foreign Marriage Act, 1892, has been already referred to.

Naturalization obtained by fraud.

24. The advantages or supposed advantages of obtaining the status of a British subject in a foreign country occasionally give rise to applications for naturalization which are not *bonâ fide*. It is by no means an uncommon case that a certificate of naturalization is obtained by means of what is, in fact, a fraudulent statement of the intention of the applicant. He has really no intention to reside in the United Kingdom; all he wants is that he himself, or perhaps more commonly his son, who is a minor, may possess a document which will, in the eyes of the authorities of a foreign country, establish his title to be a British subject.

Experience seems to show that cases of this kind are common, and that the embarrassments to which they give rise are formidable enough to make it desirable that provision should be made for the avoidance, when necessary, of certificates which have been granted on a false and fraudulent statement, either as to actual residence or as to intention to reside.

Effect of certificate out of the United Kingdom.

25. With reference to the amendments required in the Act of 1870, it appears that one of the principal defects in that Act arises from the obscurity of the provision contained in section 7 as to the effect, if any, of a certificate of naturalization outside the limits of the United Kingdom. The section provides that:

"An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate

of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect."

Doubt as to construction of the Act of 1870 on this point.

26. This enactment is so obscurely worded that it has been construed in different senses by different authorities. On the one hand it has been held that the operation of the section is confined to the United Kingdom and ceases so soon as the naturalized person is outside its borders, and consequently that the Statute does not confer upon a naturalized alien the status of a British subject outside the United Kingdom either in a foreign country or in a British Colony: other authorities have, however, maintained that the statute confers the status of a British subject everywhere, except when the naturalized person is actually within the country of which at the time of naturalization he was, and of which he still remains, a subject.

Amongst other difficulties, this obscurity in the construction of this section has been an obstacle in the way of negotiating the conventions contemplated in section 3 of the Act of 1870, for the purpose of securing that naturalized persons shall be divested of their former nationality. It is impossible to ask a foreign country to deprive its subjects of their nationality unless this country is in a position to offer in return the status of a British subject, recognized everywhere, both within and without His Majesty's Dominions.

Position of a British subject as regards a foreign State of which he is also a subject.

27. Whatever may be the true construction of this enactment, there is no great difference in practice between natural-born and naturalized British subjects so far as regards their obligations to any country which may be also entitled to their allegiance. It is frequently the case that a person who is a natural-born British subject—for instance, a person who is born in a foreign country but whose father was born in His Majesty's Dominions, is also the subject of the foreign country. But the British Government does not regard such a person as entitled to protection against any obligation imposed by the law of the foreign country so long as he remains within the limits of that country. A naturalized person who is also a subject of a foreign State is for all practical purposes exactly in the same position, except that by the terms of the section referred to he is not while in the foreign country of which he remains a subject "deemed to be a British subject" at all. In the case supposed, neither the natural-born nor the naturalized British subject could be protected against military service while actually in the State which claims his allegiance.

Proposed amendments of the law.

28. In our opinion, all differences between the status of a natural-born British subject and of a naturalized British subject should as far as possible be abolished. It is especially desirable that a naturalized alien should, like a natural-born British subject, remain a British subject everywhere and for all purposes unless and until he divests himself of or loses his

nationality in one of the ways provided by law. The law of this country cannot of course operate to confer on or divest a person of any status existing under a foreign law, and ought not to purport to do so. The drafting of the Naturalization Act of 1870 is in some particulars open to criticism on this ground. It follows that the extent and character of the protection, if any, to be afforded a person in any country which, notwithstanding his acquisition of British nationality, still under its laws has a right to his allegiance, should not, and indeed cannot, be regulated by municipal law, but must be regulated by international comity. It is most desirable that cases of double nationality should be reduced within the narrowest limits by the adoption of the principle that naturalization in one country carries with it the loss of prior nationality, but in so far as this principle is not adopted, it will be necessary to continue to act upon the rule which is at present recognised, that when a person has a double allegiance he is under a paramount obligation to that one of the two countries in which he for the time being is.

Conditions of naturalization.

29. At present naturalization can be obtained in the United Kingdom under the following conditions:—

(*a.*) A certain period of residence in the United Kingdom or of service under the Crown prior to naturalization is required.

(*b.*) There must be a declaration of intention to reside in the United Kingdom or to serve under the Crown.

(*c.*) The granting or withholding of the certificate is in the absolute discretion of the Secretary of State.

Naturalization of aliens elsewhere than in the United Kingdom.

30. We think that these conditions should be modified in the following respects:—

We see no reason why, if conditions substantially identical with those which qualify for naturalization in the United Kingdom are fulfilled by aliens residing in any other part of His Majesty's Dominions, the Government of the Possession in which the alien has satisfied these conditions should not have power to grant, or to recommend to the Home Government the grant of complete naturalization as a British subject.

Recommendation.

31. This result might be attained in different ways. Probably the simplest course would be to enact to the effect that if it appeared to His Majesty in Council that under a law in force in any British Possession the conditions to be fulfilled by aliens before admission to the rights, privileges, and capacities of British subjects to be enjoyed within the limits of the Possession included conditions which were substantially the same as those required for the grant of certificates of naturalization under an Act of the United Kingdom, it should be lawful for His Majesty by Order in Council to empower the Governor of that Possession, in his discretion, to grant to any person on whom the aforesaid rights, privileges, and capacities had been conferred under the local law a certificate of naturalization in a prescribed

form, and that certificate should confer upon the grantee the same rights, privileges, and capacities, and impose upon him the same duties, liabilities, and obligations as those conferred or imposed by, and have the same effect in all respects as, a certificate of naturalization granted by a Secretary of State.

It should also be provided that His Majesty in Council might revoke any such Order when it appeared that the law of the British Possession had been so altered as not to justify the continuance of the Order, but that, unless revoked, the Order in Council should continue in force notwithstanding any amendment or alteration of the law of the Possession.

In the case of a Possession in regard to which no Order in Council had been made, we think that the Governor might have power in his discretion to recommend to the Home Government, for a certificate of naturalization, any alien whom he could certify to have satisfied within the Possession conditions identical *mutatis mutandis* with those required for naturalization in the United Kingdom, and that the Secretary of State might, in his discretion, grant a certificate upon such recommendation. Certificates granted in accordance with the recommendations of this paragraph would confer all the privileges of British nationality both within and without His Majesty's Dominions.

Local naturalization.

32. From time to time, beginning as early as the 35th year of Charles II., and perhaps earlier, Legislatures of British Possessions have passed Acts purporting to confer naturalization on aliens under various specified conditions. Such of these Acts as are still in force are set out in the Appendix. In so far as these Acts purport to confer upon aliens certain of the rights of natural-born British subjects within the Possession no question arises. It has always, for instance, been within the power of the Legislature of any Possession to confer upon an alien the right to acquire and hold land within the territory affected. But difficult questions have from time to time arisen, and may probably arise in the future, as to the effect of this legislation upon the rights and duties of the persons so naturalized outside the limits of the British Possession. For instance, can a person naturalized locally in British India be convicted in England for a murder committed in France? Or has he the right to be married before His Majesty's Consul-General at Smyrna? These and similar questions, it will be observed, affect the rights and duties of locally naturalized persons. It is another and a different question how far such persons should be recognised as proper subjects for "good offices" as between the British and Foreign Governments. This is a matter not of law but of discretion, and need not in our opinion be considered in this report. But we think that the legal position of such persons should be made clear, and we recommend that in substitution for section 16 of the Act of 1870 a provision should be enacted to the effect that nothing in the Act should affect the power of the Legislature of any British Possession to confer

upon any alien to be enjoyed by him within the limits of that Possession any of the rights, privileges, or capacities enjoyable therein by persons born within His Majesty's Dominions. Taken in connexion with the provisions above recommended for creating the full status of a British subject, an enactment to this effect would, we think, leave no room for doubt as to the nature and effect of local naturalization. We think it right to add that although the conferring of the rights and privileges of British subjects within the limits of any Possession of the King, but not elsewhere, is usually termed "Naturalization," that expression would more properly be limited to the grant of the status of a British subject which is entitled to recognition everywhere, both within and without His Majesty's Dominions. Indeed, a case has occurred in which the fact of a person having been admitted to the status of a British subject under the law of a Colony has been held, probably through misunderstanding of the limited character of the rights conferred, to prevent the resumption of his nationality in the country of his origin.

Naturalizing authorities.

33. If these principles are adopted certificates of naturalization conferring the status of a British subject in all parts of the world would be given on similar conditions: (1) By a Secretary of State in the United Kingdom; (2) by the Governor of a British Possession under the power above recommended. The Legislature of each British Possession would, as at present, be free to determine the conditions, the mode, and the effect within the Possession of what is know as local naturalization.

Conditions of acquisition and loss of British nationality.

34. We now pass to the consideration of the amendments of the law which appear to us to be required in reference to (*a*) the acquisition by an alien of British nationality; (*b*) the loss by a British subject, whether natural-born or naturalized, of British nationality.

Re-admission.

35. We do not think it is necessary to maintain the distinction made in the Act of 1870, section 8, betweeen "re-admission" and "naturalization." A person who has become an alien under the provisions of the Act must before he or she is qualified for re-admission fulfil the same conditions as are required for naturalization. We see no sufficient reason for distinguishing between a statutory and any other alien, and consider that it would tend to the simplification of the law if the provisions of section 8 were repealed and not re-enacted.

Residence.

36. The first condition required by the Naturalization Act, 1870, for obtaining a certificate of naturalization is that the alien should, within such limited time before making his application as may have been allowed by one of His Majesty's principal Secretaries of State either by general order or on any special occasion, have resided in the United Kingdom for a period of not less than five years or have been in the service of

the Crown for a period of not less than five years. We see no reason to suggest any alteration of this provision, except so far as is necessary to meet the case of recommendation to the Secretary of State by Governors of British Possessions as proposed in para. 31.

Intention to reside.

37. The next condition required is that the alien applying for naturalization must intend when naturalized either to reside in the United Kingdom or to serve under the Crown.

Not a law of autonmous Dominions.

We think that this condition should be altered by substituting the words "the King's Dominions" for "United Kingdom." We see no reason why residence in any part of His Majesty's Dominions should not be sufficient to satisfy the condition.

Avoidance of certificate.

38. These are the only statutory conditions required at present for a certificate of naturalization. A question above referred to here arises, viz., whether any and what provision should be made for the avoidance of a certificate found to have been obtained by fraudulent representations. Those representations may be false either as regards the alleged facts as to residence or as to the existence of the alleged intention to reside. Residence is a fact capable of proof. Intention to reside is not equally capable of proof, and many cases have occurred where subsequent events have shown that no such intention could in fact have been entertained. There are many cases where naturalization has been sought for the sole purpose of obtaining protection in a foreign country in which the naturalized person intended to reside. There is no power under the Act of 1870 to set aside or revoke a certificate of naturalization which has once been granted by reason of its having been obtained by false and fraudulent statements of fact as to actual residence, or as to intention to reside.

Recommendation.

39. We think that there should be power, vested, as the case may be, in the Secretary of State or in the Governor of a British Possession to which such an Order in Council as has been above referred to applies, to revoke a certificate of naturalization which was proved to his satisfaction to have been obtained by false or fraudulent representation, and that the certificate should thereupon become void.

Persons under disability.

40. Except as hereafter mentioned, we think that it should be made clear that persons under disability, *i.e.*, minors, married women, idiots, and lunatics, should not be capable of receiving certificates of naturalization.

Certificate issued under Act of 1870.

41. Certificates of naturalization granted under the Act of 1870 should, we think, operate as if granted under the new Act; and the Secretary of State should be empowered to grant, if he thinks fit, a certificate under the new Act to any person holding a certificate under the Act of 1844 or who has been naturalized by a special Act.

Cases of doubt.

42. The Act of 1870 contains a provision enabling the Secretary of State to grant a certificate of British nationality to "a person with respect to whose nationality as a British subject a doubt exists." Different views have been entertained as to the effect and scope of this provision. It has on the one hand been regarded as being introduced simply in order to meet the case of a person who might possibly be already a British subject, but who had fulfilled the conditions necessary for naturalization, by providing that the grant of a certificate of naturalization should not be evidence that he was not a British subject prior to his naturalization. The provision has, on the other hand, been regarded as having a much wider operation, and as entitling the Secretary of State, in any case in which he might consider a doubt existed whether or not a person was a British subject, to grant a special certificate of naturalization, though the conditions prescribed by the Act have not been fulfilled. We think it should be made clear that the jurisdiction of the Secretary of State extends only to the granting of a certificate in such a form as not to prejudice the question whether or not the applicant was already a British subject. The certificate should contain a statement of the existence of the doubt, but in all other respects the conditions ordinarily required for the grant of a certificate should be observed. This is in fact in accordance with established practice.

Loss of nationality.

By declaration of alienage.

43. Having dealt with the acquisition of nationality we next proceed to deal with the ways in which nationality may be lost. In the law as it at present stands, the provisions relating to the case of a natural-born and of a naturalized British subject are to some extent different. By section 4 of the Naturalization Act, 1870, a person who is a British subject by reason of his having been born within the King's Dominions, but who also became at birth (by reason of parentage or otherwise) a subject of a foreign State may, if of full age, and not under any disability, make a declaration of alienage, and shall from and after the making of such declaration cease to be a British subject. There is a similar provision with regard to a person born out of His Majesty's Dominions to a father, being a British subject. This section, as it stands, is open to criticism, on the ground that it appears to assume that in every case a person born out of His Majesty's Dominions to a father who is a British subject, would be himself a British subject. This, however, is not always so, as has already been pointed out.

Recommendation.

44. The object of this section is to obviate as far as possible the complications arising from double nationality, which have been already referred to, by allowing a person who is a natural born British subject, and also by birth a subject of a foreign State, the right of divesting himself of his British nationality. We think these provisions should be simplified and redrafted,

but we do not suggest any alteration of the law. The only case in which a person who has become a British subject by naturalization is empowered to make a declaration of alienage is the peculiar case provided for by Section 3 of the Act of 1870, and referred to in para. 26 of this report.

Loss by voluntary naturalization in a foreign country.

45. Nationality may also be lost when a British subject, whether naturalized or natural-born, becomes voluntarily naturalized in a foreign country.

The expression "voluntarily naturalized" is not entirely free from obscurity. Does it imply some act done for the express and primary purpose of obtaining a foreign nationality, or an act which, though voluntary, is not done for this express purpose, but for some other object to which change of nationality is attached as an incident? For instance, different views have been entertained by different legal experts whether the marriage of a British subject with a foreign woman, the legal consequence of which in her country is to invest the husband with her nationality, is voluntary naturalization within the meaning of the section. Or, again, to take an extreme case, suppose that by the law[1] of a foreign State all persons landing on its shores at once become its subjects, would the act of landing with or without a knowledge of the consequence be a voluntary naturalization? We think that the law should be made more definite and that British nationality should not be lost unless the person who is naturalized in the foreign country has expressly applied for naturalization or done some act from which acceptance of the foreign nationality may reasonably be inferred.[2]

Persons under disability.

46. The mode in which nationality may be lost by persons under disability will be dealt with in a later portion of this report.

Dependent persons.

47. We come now to consider the questions which have given rise to the greatest difficulty in practice—the effect of naturalization upon the status of dependent persons.

Marriage of a female British subject with an alien.

48. First as to the wife. By section 16 of the Act of 1844 (7 & 8 Vict. c. 66), it was provided that any woman married to a natural-born subject, or person naturalized, should be deemed and taken to be herself naturalized and have all the rights and privileges of a natural-born British subject. No provision was made for the case of a natural-born or naturalized British woman marrying an alien. The Common Law still governed her status, and she did not lose her British nationality. The Act of 1870 adopted the general principle that the nationality of the married woman should be that of her husband: "A married woman shall be deemed to be a subject of the "state of which her husband is for the time being a subject."

[1] *See* pp. 64, 65 of the Appendix to the Report of the Royal Commission of 1869. Case of New Granada.

[2] *See* note by Sir Dennis Fitzpatrick on p. 19.

Recommendations.

49. We do not propose any substantial alteration in the law. We think, however, that it should be so expressed as to purport to deal only with the question whether or not the woman becomes or ceases to be a British subject according to the law of this country, and not to attempt to define her status as regards the law of other countries. All that our law is concerned with is whether the woman is an alien or a British subject, and when and by what means she ceases to be, or becomes, the one or the other. The substantial matters are that a woman who is an alien becomes a British subject by marrying a British subject; that a woman who is a British subject ceases to be a British subject by marrying an alien; and that whenever during the continuance of a marriage the husband becomes or ceases to be a British subject the wife at the same moment becomes or ceases to be a British subject.

Effect of dissolution of marriage.

50. It will be convenient, here, to consider the effect upon the status of the woman of the dissolution of marriage by death or divorce. The Act of 1870 is not clear as to the effect of dissolution of marriage in these cases. At present, if a woman is married to a British subject or to an alien and the marriage is terminated by his death, she continues to be a British subject or an alien, as the case may be, until something further occurs to alter her status. The same probably holds good when the marriage is terminated by divorce. We think, however, that the position of a divorced woman should be made clear.

51. A question arises whether in the case of a woman who has lost her British nationality by marrying an alien, and has become a widow, there should be any relaxation of the ordinary conditions which must be fulfilled before she can be re-admitted to British nationality. At present a widow may obtain a certificate of re-admission to British nationality in the manner prescribed by section 8 of the Act of 1870. This is in practice held to impose upon the widow the same conditions as to residence and intention to reside as are imposed upon any alien applying for a certificate of naturalization. The principal reason for any relaxation of such conditions is to be found in the facilities which might result to her infant children to become more speedily British subjects, and so to relieve them from any disqualifications on this ground from entering the public service. The latter question, however, we propose to deal with otherwise. Apart from this indirect advantage we see no reason why a woman who has lost her nationality by marrying an alien should be placed on a footing different from that of any other alien, and we therefore recommend that, as is in fact required at present, a woman in this position before again becoming a British subject should fulfil the conditions required for naturalization.

Recommendation.

Effect of naturalization of parent upon status of minor children.

52. We have next to deal with the effect of naturalization of a parent upon the status of children born (1) before, (2) after naturalization.

Present law.

53. The present law on this subject is contained in sub-sections 3, 4, and 5 of section 10 of the Naturalization Act, 1870. There has been some conflict of opinion in regard to the strict interpretation of this section,[1] but in recent practice its effect has been taken to be as follows: Any child who is born in a foreign country, whether before or after naturalization of the parent, and who during infancy becomes resident with the father or mother (being a widow) in any part of the United Kingdom, is deemed to be a naturalized British subject. Conversely, where a father or a mother (being a widow) has lost British nationality any child who during infancy and after the naturalization of the parents abroad has become resident in the country where the father or mother is naturalized, and has according to the law of that country become naturalized therein becomes a subject of that country and thereupon ceases to be a British subject. There is also a provision for resumption of British nationality by a child whose parent has been re-admitted to that status, but as we propose to dispense with the distinction between naturalization and re-admission this needs no further notice.

Change recommended.

54. It will be seen that the test at present of the acquisition of British nationality by an infant is (1) the naturalization of the parent; (2) residence with the parent in the United Kingdom. Loss of British nationality depends (1) on loss by parent; (2) on residence in the country where the parent is naturalized; (3) on the law of that country recognising the child as also naturalized therein. It appears to us that the law as it stands is needlessly complicated, and that it leaves undefined the amount and character of residence necessary in each case to affect the nationality. We think it would be desirable to adopt a clearer and more easily applied test of the nationality of minor children.

As to children born before naturalization of parent.

55. Dealing first with the case of children born before the naturalization of the parent, we see no reason why, if the parent so desires and the Secretary of State approves, such children should not be naturalized at the same time with the parent and their names included in his certificate. All that seems necessary is that the parent should make a declaration of his intention that the child sought to be naturalized with him should reside with him in His Majesty's Dominions. It will be in the discretion of the Secretary of State to include or not to include the minor in the certificate. The nationality of the child would if this recommendation is adopted be provable

[1] Anson's History of the constitution (Part II, p. 69); Dicey's Conflict of Laws, p. 191; and Hall's Foreign Jurisdiction of the British Crown, p. 27.

at once by the evidence of the certificate itself, and would not depend upon questions of law and fact which may be more or less uncertain and difficult to ascertain. But we think that it is right that after the child comes of age he should within a time to be limited (say one year) have the option of becoming an alien by declaration of alienage. The power given to the Secretary of State should be extended to Naturalizing Authorities in British Dominions.

As to children born after naturalization.

56. If our recommendation is adopted that the distinction between a natural-born and a naturalized British subject should be as far as possible abolished, it should be enacted that every child born to a naturalized father after naturalization, whether born within His Majesty's Dominions or not, is a British subject. The requirement of residence with the naturalized parent which at present exists should, we think, be abolished.

Naturalization of minors in certain cases.

57. A case of hardship sometimes arises when a woman who is a British subject has lost her nationality by marrying an alien, and is left a widow with infant children. Her home and connexions being in the United Kingdom she desires her infant sons to enter the British army, or navy, or some branch of the Civil Service. She cannot however be readmitted to British nationality without satisfying the requirement of five year's residence, and consequently the sons cannot obtain the necessary naturalization by "becoming resident" with her. The difficulty has been hitherto met by the Secretary of State feeling himself at liberty to grant a certificate of naturalization to a minor for the purpose of enabling him to enter the public service. It is, however, doubtful whether the Act of 1870 contemplates the grant of a certificate to a minor at all. We think this power should be expressly given, and that the Secretary of State should be entitled in suitable cases, for special reasons which he may consider sufficient, to grant to a minor a certificate of naturalization without fulfilment of the conditions ordinarily required.

Loss of nationality by minors upon fathers losing it.

58. With regard to the effect upon a minor child of loss of British nationality by the father, whether by declaration of alienage or otherwise, we think that the principle that the nationality of a minor child should depend upon that of the father should govern, and that the child should lose his British nationality at the same moment that his father becomes an alien. Any hardship which this rule might work in individual cases would, we think, be sufficiently obviated by the power above recommended to be given to the Secretary of State to grant certificates for sufficient reasons to minors.

Children of widow.

59. The status of the children of a widow of a British subject who loses her nationality by marriage with a subject of a foreign State is somewhat obscure under the provisions of section 10 (3) of the Act of 1870. According to one view, if

she not only becomes an alien by English law, but also becomes a subject of foreign State, and the child by her former husband becomes resident in the foreign country, and also becomes naturalized therein, such child becomes a subject of that State and loses British nationality. A doubt has, however, been expressed whether this provision applies to the case of a widow who loses her nationality by marriage with an alien. We recommend that this obscurity should be cleared up. We are not entirely agreed as to the most desirable amendment of the law. The majority of the Committee think that the marriage of a widow—being a British subject—with an alien should not affect the national status of her children—if any—by her first husband whether or not they became residents in, and subjects of, the country of the second husband. To meet the case where the children as a fact follow the mother and are invested with the nationality of the stepfather, they think that such children should be empowered on coming of age to make a declaration of alienage. The minority are of opinion that it would be more consistent with principle to provide that when a widow ceases to be a British subject by reason of her marriage with an alien, her infant children should also cease to be British subjects ; but should be entitled to resume British nationality by a declaration to be made within one year after coming of age.

60. We have to aknowledge the very valuable services of our Secretary, Mr. Wheeler, especially in collecting and arranging the voluminous materials which it has been necessary for us to consider.

SUMMARY OF RECOMMENDATIONS.

1. We recommend that the existing Statute Law relating to the acquisition and loss of British Nationality should be consolidated, and that the Statutes 25, Edw. III., Stat. 2; 7 Anne, c. 5, s. 3; 12 & 13 Will. III., c. 2 (part); 4 Geo. II., c. 21, s. 1; 13 Geo. III., c 21; 33 Vict., c. 14; 33 & 34 Vict., c. 102; 35 & 36 Vict., c 39; 58 & 59 Vict. c. 43; should be repealed.

2. We recommend that the existing law as to acquisition of British Nationality by parentage should be re-enacted in a simpler form, with this exception that where the father was born out of His Majesty's Dominions a child also born out of such Dominions should not be a British subject. We also recommend that the law as to birth on board a British ship should be declared as stated in paragraph 12 of this report.

3. We recommend that provision should be made by legislation enabling a Secretary of State, or the Governor of a British possession, to confer the status of a British subject upon persons who fulfil the requisite conditions in any part of the British

Dominions, and that the status so conferred should be recognized by British law everywhere, both within and without His Majesty's Dominions. This provision should be without prejudice to the power of the Legislature of any British Possession to provide for the conferring upon any persons under such conditions as it might see fit the whole or any of the rights of British subjects within its own territory.

4. We recommend that the conditions necessary for the acquisition and loss of the status of a British subject should remain as at present, with the modifications as to residence, revocability of certificate, and otherwise, mentioned in detail in the report.

5. We recommend that the law as to the acquisition and loss of the status of a British subject by persons under disability should be simplified and modified in the manner stated in detail in the report.

We have the honour to be,
Sir,
Your obedient Servants,

KENELM E. DIGBY.
F. H. VILLIERS.
D. FITZPATRICK.[1]
W. E. DAVIDSON.
H. BERTRAM COX.

W. WHEELER,
Secretary.

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[1] Subject to this, that I am not satisfied that what is suggested at the end of paragraph 45 is sufficient to get rid of the ambiguities and hardships arising from the present law. *See* my note of the 16th July, 1901, appended. D. F. P.

NOTE BY SIR DENNIS FITZPATRICK.

Section 6 of the Naturalization Act, 1870, provides that a British subject who has "voluntarily become naturalized" in a foreign State shall cease to be a British subject.

This provision is clear enough, and right enough, in so far as it applies to cases in which a British subject applies to a foreign State for what may be called "naturalization in solemn form," or in which, as *e.g.,* under the first clause of Art. 9 of the amended French Code, he resorts to some other official procedure for the purpose of acquiring a foreign nationality.

But suppose a British subject, mainly with a view to his own comfort or happiness, or advancement, takes, in a foreign country, some action, having in itself no relation whatever to the acquisition of a national character, as, *e.g.,* if he sets up some sort of business there, or acquires some sort of property there, or marries a woman of the country, or if he merely resides there for a certain time—and suppose the law of that country chooses, thereupon, *ipso facto,* to confer or impose upon him its nationality, either absolutely, or unless he has taken some step to ward off this result. In regard to such a case, two questions present themselves, viz.:—1st, are we to hold that that British subject has "voluntarily become naturalized" within the meaning of Section 6 of our Act? and 2nd, if we are, ought that section to be allowed to stand as it is without some amendment? As to the former question, the answer to it, we have been advised, is in the affirmative, provided the British subject had actual notice of the foreign law—otherwise in the negative. As to the latter question, assuming, as we are bound to do, that the answer to the former question is correct, I think that the law stands in need of amendment. To say nothing of the awkwardness of making the retention or loss of a man's British national character dependent on the state of his knowledge at a certain point of time, it seems to me that, even if the British subject concerned has notice of the foreign law, it is, under the circumstances, a very harsh thing to deprive him of his British nationality.

I may observe that the peculiar provisions of the foreign laws to which I refer have been condemned, both as offending against the principle that a man should not be invested with a new national character unless he actually applies for or accepts it, and also as laying a trap for the unwary.[1] But it is open to

[1] *See* Cogordan, pp. 117-18, and Hall, Foreign Jurisdiction, pp. 46 and 47. *See* also Calvo. § 644.

every State to enact such laws if it thinks fit, and if one of our subjects thoughtlessly brings himself within the operation of such a law, he must forfeit all claim to our protection so long as he remains within the limits of the State of which he has thus become a subject. This is the necessary consequence of his thoughtlessness, and he must accept it; but it is not a necessary consequence that he should be deprived of his British nationality. No doubt if he retains it we have the awkward result of a double nationality, but I do not think that is, under the circumstances a sufficiently strong reason for depriving him of his British nationality. The position was discussed in an article by M. Robinet de Clery in the year 1875 with reference to provisions of the Code Civil as they then stood, and it was further discussed in 1886 in the debates on the amending law which was passed in 1889. The view taken was that the acquisition by a French subject of a foreign nationality otherwise than by naturalization in solemn form, should not entail the loss of his French nationality unless he had either applied for or accepted that foreign nationality; and in the law of 1889 it was provided (Art. 17, cl. 1) that the acquisition by him of a foreign nationality " par l'effet de la loi " (as distinguished from its acquisition by naturalization in solenm form) should not have this effect except where he obtained the foreign nationality on his own application (sur sa demande).[1]

I would suggest that, following pretty closely this example, there should be substituted for the present provision of Section 6 a clause to the effect that a British subject should cease to be such if he, not being under any disability, acquired the nationality of a foreign State *in pursuance of an official procedure established for that purpose,* and in the course of which he applied for or accepted that nationality.

This would provide for all ordinary cases that it seems desirable to hit, but there would remain two exceptional cases for consideration.

The first is the case of a British subject acquiring the nationality of a foreign State *ipso facto* by accepting service under the Government of that State.

I think it should be provided that such a man should cease to be a British subject unless he had accepted such service with the previous consent of the British Government.

The second case is the rare one of a British subject having the nationality of a foreign State conferred on him personally (say) in recognition of eminent services, by a special grant of the Legislature or other authority in that State which, so far as could be seen, would seem to have been made spontaneously and without any sort of application or acceptance on his part.[2] If it is thought necessary to provide for this case it would

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[1] Journal du droit international privé for 1875, p. 80. Weiss droit international privé, T. i., pp. 450-52.

[2] *See* Weiss, op. cit., pp. 446, 447.

probably be best to enact that the person so naturalized should cease to be a British subject on the expiration of one month from the date of the naturalization unless within that time he sent to the proper authority of the foreign State a protest against the naturalization or the British Government assented to the naturalization.

D. FITZPATRICK.

16th July, 1901.

EXTRACTS FROM THE MINUTES OF THE COLONIAL CONFERENCE, 1902.

Sixth Day.

Wednesday, July 30, 1902.

PRESENT:

The Right Honourable J. Chamberlain, M.P., His Majesty's Secretary of State for the Colonies.

The Right Honourable Sir Wilfrid Laurier, G.C.M.G., Premier of Canada.

The Right Honourable Sir Edmund Barton, G.C.M.G., D.C.L., Premier of Australia.

The Right Honourable R. J. Seddon, Premier of New Zealand.

The Honourable Thomas Ekin Fuller, for the Right Honourable Sir J. Gordon Sprigg, G.C.M.G., Premier of Cape Colony.

The Right Honourable Sir Albert Hime, K.C.M.G., Premier of Natal.

The Right Honourable Sir Robert Bond, K.C.M.G., Premier of Newfoundland.

The Earl of Onslow, G.C.M.G., Parliamentary Under-Secretary of State for the Colonies.

Sir M. F. Ommanney, K.C.B., K.C.M.G., Permanent Under-Secretary of State for the Colonies.

Sir John Anderson, K.C.M.G., Secretary.

PRESENT ALSO:

Rear-Admiral R. N. Custance, Captain Jackson } For the Admiralty.

Mr. Bertram Cox, Assistant Under-Secretary to the Colonial Office.

The Honourable W. S. Fielding, Minister of Finance for the Dominion of Canada.

The Honourable Sir Frederick Borden, K.C.M.G., Minister of Militia and Defence for the Dominion of Canada.

The Honourable W. Paterson, Minister of Customs for the Dominion of Canada.

THE NATURALIZATION OF BRITISH SUBJECTS.

The SECRETARY OF STATE: Then I think the only other point which has not been disposed of is the question of naturalization, by the Government of the Cape and the Government of Natal.

Sir ALBERT HIME: We think that it is desirable that there should be some uniform legislation with regard to naturalization. At present, a man may be two or three years in England, and some two or three years in some other Colony, and yet he cannot be naturalized until he has lived a certain number of years in any other Colony to which he may go. And it seems to me, also, that if a man is naturalized in one Colony then the naturalization ought to stand in the same way in any other Colony. If he is naturalized in the United Kingdom he ought to be thereby naturalized in any of the British Colonies, and *vice versa*. If he is naturalized in a British Colony, he ought to be naturalized if he proceeds to England, or any other part of the Empire. That is also the view of the Cape, but, of course, each country has its own naturalization laws, and each Colony and the Mother Country have different laws with regard to the period of residence before naturalization ensues. There has been a Committee on the subject, and I believe there was a gerat deal of correspondence. I do not know whether the Government has taken the matter up as to whether there should be some uniformity of legislation throughout the Empire on the question of naturalization, so that if a man is once naturalized in any part of the Empire he should be at once naturalized in any other part.

Sir EDMUND BARTON: I think there would be very considerable opposition to that proposal from Australia and in those Colonies generally which pass laws under which they can deal with certain classes of immigrants, whether British or not. They would be all sure to make the same objection. Of course Natal has passed an immigration restriction law and in addition there are four or five others now in existence; and where they do exist I think that this objection would always arise: That if a person is to be deemed naturalized all over the Empire, when naturalized in one place, it would seem a remarkably invidious thing to put the immigration law in operation against him, and yet that might be used as an engine, as an end, for the procurement of a large number of naturalization papers for the purpose of getting over the obstacles which always would exist under the autonomous law of the particular Colony against their introduction. That would be a very awkward difficulty that could arise, and might in-

volve portions of the Empire in serious disagreement with each other, and I think that is a matter that we ought to take pains to avoid.

Mr. FULLER: Has there been any expression from Lord Milner about having one law in reference to this term of naturalization in South Africa?

The SECRETARY OF STATE: Yes, I have received a very strong opinion from Lord Milner that the present law of naturalization is altogether inadequate, and extremely undesirable in its effects. As I understand, the law at present in the Cape gives naturalization at an earlier period than in any other part of His Majesty's Dominions.

Mr. FULLER: Practically, no period.

The SECRETARY OF STATE: Practically after six months' residence a man can acquire his citizenship in that way, and the opinion in this country is that British citizenship should not be too freely admitted in the case of an alien, and we have the right, before they acquire it, of being satisfied on sufficient evidence, that they have the intention of permanently taking up their residence amongst us, and we have decided, I think, that five years of fixed residence shall suffice for the purpose, accompanied, as it is, by the payment of a certain fee. I confess I should look with grave suspicion upon any proposal to alter that, or to lessen the period. Our authorities are in favour of making the period count as a fixed residence in one place—in one country I mean. They object to the proposal of a residence, say, of one year in Canada, one year in Cape Colony, and another in the United Kingdom, and so on, to make up the five years just to secure naturalization. They say if any alteration of that kind prevailed, it would be almost impossible to obtain satisfactory evidence, and therefore they are of opinion that naturalization should be given in the country in which there has been a residence of five years. Of course, if the Colonies were prepared to alter their laws, and bring them into accordance with our laws, it might be the subject of consideration how far naturalization in one place should carry weight and be considered as a reciprocal arrangement in all the other parts of the Empire. But at present, and so long as there is such a very wide difference as exists now between the law of the Cape and the law of the United Kingdom, no arrangement of the kind could possibly be considered.

Mr. FULLER: I think that, so far as the Cape is concerned, two years is sufficient.

Sir ALBERT HIME: It is two years in Natal.

The SECRETARY OF STATE: I know it is a short residence in Natal.

Sir ALBERT HIME: And then it is with the consent of the Governor in Council, and they can refuse, if they think fit, to naturalize any man who does not intend to remain in the Colony, or if he is an undesirable in any respect, then letters of naturalization are not granted.

The SECRETARY OF STATE: I think we have the same, or a similar, provision here, but, of course, naturalization is very seldom refused. There would have to be distinct and definite proof that the person applying was clearly an undesirable citizen.

Sir ALBERT HIME: It has been refused lately in a large number of cases—Polish Jews returning to Johannesberg. We have had some correspondence on the subject.

The SECRETARY OF STATE: I confess, if I may be allowed to express a personal opinion, I think that five years is not at all too long before naturalization is admitted, but that, of course, is in the discretion of the local governments of the different Colonies.

Mr. SEDDON: At all events, I do think the period should not be less than twelve months.

Sir ALBERT HIME: I should say two years.

Mr. SEDDON: Six months is too short.

Sir WILFRID LAURIER: The conditions vary so much that it would be better for each Parliament to deal with it.

Sir EDMUND BARTON: It would be very difficult——

Mr. FULLER: What is your term?

Sir EDMUND BARTON: Five years, I think is New South Wales, and I think it is the same in several of the Colonies within the Commonwealth.

Sir ALBERT HIME: There is a great difference between the Colonies and the Mother Country with regard to naturalization. We can tell when a man comes meaning to settle down in the country better than you can perhaps in the Mother Country. We know a man who buys a farm and settles down means to carry on his occupation whatever it may be—buys a store in town and sets up business, we can tell whether he means to remain or not. In the United Kingdom it is really very difficult to say whether a man intends to remain or whether he does not intend to remain. What we say is that where a man is naturalized in one part of His Majesty's dominions he should be practically naturalized in every other part. If there were to be some common period which would be satisfactory to all concerned, say, three years, but at present in Natal it is two years. It does seem, I submit, rather hard that a man who has been naturalized after five years in England, should not be naturalized if he comes to a Colony, or that a man who has been naturalized in Australia after five years, if he goes to

England, that naturalization that he has served for is of no use to him.

Sir EDMUND BARTON: Opinions may differ so in various parts of the Empire as to the right sort of men we want there.

The SECRETARY OF STATE: Very much; we should naturalize, as of course, many persons who would be refused in Natal, if they had resided five years in this country.

Sir EDMUND BARTON: In any event, should not something like an assimilation of the laws precede a mutual arrangement for naturalization?

Mr. CHAMBERLAIN: A proposal, which I think is worth consideration, which was made by a Committee appointed by the Home Office here to consider the whole subject, was that full naturalization carrying British rights throughout the Empire should only be granted where a person fulfils the full period, such as five years, in the district of the particular authority which grants naturalization, but that each of these local authorities might, if they chose, give local rights after a lesser period of residence. It would be possible, therefore, for Canada, if she chose, to give to a man who had resided two years in Canada all local rights, although she could not confer upon him the full naturalization rights of a British citizen.

Mr. FULLER: Would the local rights carry the franchise in the country in which they were granted?

The SECRETARY OF STATE: Yes, certainly.

Mr. FULLER: I think it is a long time after settlement in the Colony before a man can enjoy the franchise.

The SECRETARY OF STATE: That is rather a different question. Of course we are dealing now only with aliens; *non constat* that an Englishman in the Colonies should not have the franchise at an earlier period

Mr. FULLER: But he would require naturalizing in the country, would he not?

The SECRETARY OF STATE: It might require local legislation, but you might adopt legislation which might give him the franchise before he was naturalized, if you thought fit to do so.

Sir ALBERT HIME: He might get the franchise immediately by acquiring property if he were a British subject.

The SECRETARY OF STATE: It would be perfectly possible to establish by legislation that all British subjects, persons who had been naturalized, and British subjects in any part of the British dominions, might acquire the franchise and local rights, at an earlier period than the full naturalization. Some persons would not require to be naturalized. I think we can hardly adopt any resolution. It is a matter for the consideration of the different local governments, and I certainly hope that in the

Cape the matter will receive serious attention. I think there is great danger, as it stands at present, of your getting most undesirable people.

Mr. FULLER: Yes, there is.

NATURALIZATION.

No. 1.

Governor General the Earl of Minto (Canada) to Mr. Chamberlain.

(Received 5th May 1902.)

(No. 139.)

GOVERNMENT HOUSE, OTTAWA, 21st April 1902.

SIR,

In reply to your circular despatch of the 10th October last asking for the views of this Government on the recommendations of the Home Department Committee in regard to the law relating to naturalization, I have the honour to enclose a copy of an approved minute of the Privy Council, embodying a report on the subject by the Minister of Justice.

It will be observed that Ministers express their concurrence in the principle that residence in any British Possession should qualify for full naturalization equally with residence in the United Kingdom; but suggest that in harmony with the amendment by which it is proposed to substitute "the King's Dominions" for "the United Kingdom" in the declaration by the alien as to his place of future residence, it should also be provided that past residence for a period of five years within "the King's Dominions" instead of within the "United Kingdom", should satisfy the condition of residence required by the naturalization law.

I have, &c.,

MINTO.

Enclosure in No. 1.

Extract for a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 12th April, 1902.

The Committee of the Privy Council have had under consideration a Circular Despatch, dated 10th October 1901, from the Right Honourable the Secretary of State for the Colonies, transmitting the report of the Departmental Committee appointed by the Secretary of State for the Home Department to consider the doubts and difficulties which have arisen in connection with the interpretation and administration of the Acts relating to Naturalization, and requesting to be advised

whether legislation for the amendment of those Acts is desirable, and if so, what scope and direction such legislation should take.

The Minister of Justice to whom the said Despatch was referred observes that the Report of the Committee recommends that the existing law relating to the acquisition and loss of British nationality be consolidated with certain amendments suggested by them.

Paragraph 31 suggests that if it appeared that under a law in force in any British Possession the conditions to be fulfilled by aliens before admission to the rights, privileges and capacities of British subjects to be enjoyed within the limits of the Possession included conditions which were substantially the same as those required for the grant of certificates of naturalization under an Act of the United Kingdom, the Governor of that Possession should be empowered to grant a certificate of naturalization to have the same effect as one granted by a Secretary of State.

And the same paragraph further suggests that in all other cases the Governor might have power in his discretion to recommend to the Home Government for a certificate of naturalization any alien whom he could certify to have satisfied within the Possession conditions indentical *mutatis mutandis* with those required for naturalization in the United Kingdom, and that the Secretary of State might in his discretion grant a certificate upon such recommendation.

The Minister states that the law in force in Canada is less exacting than the proposed Imperial Act, and as the conditions therefore would not be "substantially the same," the Governor General of Canada would not be able to grant such certificate of naturalization.

The Governor General in Canada would only be able under the second above-mentioned proposals to certify that an alien had satisfied in Canada the requirements *mutatis mutandis* for naturalization in the United Kingdom.

The Minister recommends that the Imperial Authorities be advised of the approval of the Government of Canada of the principle that residence in one of the British Possessions should qualify for full naturalization in the same way as in the United Kingdom, and further that it would be simpler and avoid cases of hardship if the qualification with regard to past residence could be altered by substituting the words "the King's Dominions," for "United Kingdom," in the same way as is proposed for the intention to be declared for future residence.

The Minister states that under the law, as proposed to be amended, it would seem that an alien who had resided five years in either the United Kingdom or in Canada would be able to obtain full naturalization, but an alien who had resided four years in the United Kingdom, followed by four years' residence in Canada, or *vice versa,* would be unable to obtain naturalization in either country.

The Committee advise that His Excellency be moved to forward a certified copy of this Minute to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for His Excellency's approval.

JOHN J. McGEE,
Clerk of the Privy Council.

No. 2.

Naturalization Committee to Mr. Ritchie.

WHITEHALL, 18th June 1902.

SIR,

In accordance with your instruction we have given our careful consideration to the Colonial Office letter of the 16th ultimo, forwarding copies of communications received from the Governments of certain of the self-governing Colonies in regard to our report on the question of naturalization, and we submit the following observations thereon.

In drafting our report we considered the question whether a person applying for a certificate of naturalization should be required to show that he had resided for five years within the jurisdiction of the naturalizing authority to whom the application might be addressed, or whether, so long as the applicant could show that he had resided five years within the King's Dominions, it should be immaterial that he had during that period resided within the jurisdiction of more than one naturalizing authority.

We recommended the first alternative. We considered that five years' residence in the United Kingdom or some one British possession would be a proper guarantee of a definite intention to continue to reside within the Dominions, and that if it were permitted to an applicant for naturalization to reckon five years' residence made up of shorter terms in various parts of His Majesty's Dominions, difficulties would arise in reference to evidence of residence and fitness for naturalization. We adhere to this view.

With regard to the remark of the Minister of Justice of Canada that the Governor-General of that Dominion would only be able, under the proposals of the committee, to certify that an alien had satisfied in Canada the requirements *mutatis mutandis* for naturalization in the United Kingdom, we would observe that we contemplated that, speaking generally, the Governments of the several Colonies would bring their existing "naturalization" laws up to the standard requisite for enabling them to grant full and complete naturalization, and make whatever supplementary provision they might think fit

for the grant to aliens, under provision similar to that of section 16 of the Naturalization Act of 1870, of purely local rights.

If it were made clear to the Canadian Government that at present they are entirely without power to grant complete naturalization, and that it is proposed to give them such power and at the same time to leave them unfettered in the matter of the grant of local rights to aliens, they would probably feel no further difficulty in the matter, especially if it were pointed out to them that, as regards the passage in our report which has attracted their particular attention, our proposals are that the Government of the United Kingdom shall have no greater powers than those which we have recommended to be conferred on the Governments of other parts of His Majesty's Dominions.

The papers referred to us do not appear to call for any further observations.

We are, &c.,

KENELM E. DIGBY,
F. H. VILLIERS,
D. FITZPATRICK,
W. E. DAVIDSON,
H. BERTRAM COX.

The Right Hon. C. T. Ritchie, M.P.,
&c., &c., &c.

DOCUMENTS LAID BEFORE THE COLONIAL CONFERENCE, 1907

XI.

NATURALIZATION.

(1) Resolution of Government of New Zealand.

"That the law as to naturalization should be uniform throughout the Empire, and that naturalization, wherever granted, should be Imperial, and not local—subject, however, to the right of any Self-Governing Dependency to impose special conditions if it thinks fit."

(2) Resolution of Government of Cape Colony.

"This Conference is of opinion that in order to remove anomalies attaching to naturalization of Aliens throughout the Empire, His Majesty's Government should, after full consultation with the Colonies, take steps to secure Imperial legislation providing for the treatment of the question on a uniform basis."

No. 1.

The Secretary of State to the Governors-General and Governors.[1]

DOWNING STREET,
December 14, 1906.

MY LORD (*or* SIR),

[I HAVE the honour to acquaint you for the information of] your Ministers [that the Government of Cape Colony][2] have suggested as a subject for discussion at the coming Colonial Conference the question of uniform laws to regulate the naturalization of aliens.

2. As a preliminary to such a discussion, which I trust may be possible within the time available for the Conference, I think it may be convenient to make some reference to the correspondence which has passed upon this question.

3. In his circular despatch of the 10th of October, 1901, Mr. Chamberlain forwarded the report of an Interdepartmental Committee appointed to consider doubts and difficulties which had arisen respecting the Naturalization Acts. For convenience of reference I enclose a copy of that Report,[3] which dealt in some detail with the anomalies existing in the Naturalization Laws of the various Colonies and the mother country, and suggested Imperial legislation on certain specified lines. It was decided to obtain the views of the Colonies under responsible government before considering the proposed legislation.

[1] Canada, Australia, New Zealand, Newfoundland, Cape, and Natal.
[2] Portions in [ ] omitted to Cape. [3] [Cd. 723].

4. The answer of the Canadian Government to Mr. Chamberlain's despatch will be found printed on pages 151-152 of the Blue Book recording the results of the Colonial Conference of 1902 [Cd. 1299.] The Governments of Newfoundland and Natal, in despatches dated the 2nd and 29th of January 1902[1] respectively, expressed general concurrence in the report of the Interdepartmental Committee. The Government of New Zealand suggested that the question should be discussed at the Colonial Conference of 1902, and the Governments of the Commonwealth of Australia and of Cape Colony expressed no opinion.

5. The question was in due course considered at the Colonial Conference of 1902, but the discussion revealed some divergence of view, and no definite conclusion was recorded.

Natal, 18, 1905.
Canada:[2]
2 Ed VII 23.
3 Ed VII 38.
4 Ed VII 25.
4-5Ed VII 25.
Commonwealth, 11, 1903.

6. Subsequently the Government of Cape Colony forwarded a full expression of their views on the Report of the Interdepartmental Committee in a minute dated the 11th of April 1904, a copy of which is enclosed in this despatch. Further, the Colonial Naturalization Acts of the Self-governing Colonies, of which copies are printed in the Appendix to the Report of the Interdepartmental Committee, were amended in some cases, as will be seen by reference to the various Acts of which copies are enclosed for convenience of reference.

7. To complete the reference to this part of the subject it may be well to add that though the Cape Colony Naturalization Acts have not been amended, the Government of that Colony have expressed their intention of conforming to the principle of the Natal Act, No. 18 of 1905 (section 2), in considering applications for naturalization. It may be added that this section of the Natal Act has also been embodied in the laws of the Transvaal and Orange River Colony.

8. The Report of the Interdepartmental Committee was further considered in this country after the Colonial Conference of 1902, and a draft Bill was prepared for consideration. The matter has not, however, gone any further, in view of pressure of other legislative demands, and of the fact that His Majesty's Government have not been furnished with the views of all the Colonies on the question. The latter fact has also made it impossible for them to take any action in connection with the views of the Governments of Canada and Cape Colony referred to above.

9. As, however, the question will probably come up for discussion at the next Conference, I think it may be useful now to forward a copy of the draft Imperial Bill which was prepared, together with copies of memoranda explaining its provisions. I shall be glad if your Ministers will give these documents their careful consideration, and favour me with

[1] Not printed.
[2] The Canadian Naturalization Law is consolidated in the Revised Statutes, 1906, Cap. 77, printed below.

their views before the Conference meets. I desire, however, to explain that the Bill is a preliminary draft only, and that its terms are in no way finally settled.

10. In view of the fact that under the law of this country non-European birth or descent is not a bar to naturalization, as it is in some Colonies, I think it right to draw your Minister's special attention to clause 9 of the Bill, which will make it clear, if it was not already clear before, that all persons naturalized in this country would have the full status and privileges of a natural-born British subject in all the Colonies.

I have, &c.,

ELGIN.

Enclosure 1 in No. 1.

The Governor of the Cape of Good Hope to the Secretary of State.

(Received May 7, 1904.)

GOVERNMENT HOUSE, CAPE TOWN,
April 16, 1904.

SIR,

I HAVE the honour to transmit to you a copy of a Minute from Ministers on the subject of the interpretation and administration of the Acts relating to naturalization.

I have, &c.,

WALTER HELY HUTCHINSON.

Sub-Enclosure in No. 1.

Ministers to Governor.

(MINUTE.)

PRIME MINISTER'S OFFICE, CAPE TOWN,
(No. 1/206.) April 11, 1904.

With references to His Excellency the Governor's Minutes[1] No. 500 of 6th November 1901, No. 912 of 2nd December 1902, No. 322 of 12th May, 1903, No. 590 of 8th September, 1903, and No. 183 of 16 ultimo, forwarding despatches from the Right Hon. the Secretary of State for the Colonies relative to the interpretation and administration of the Acts relating to naturalization, Ministers have the honour to forward herewith copy of a report by the Honourable the Attorney-General on the subject, dated 6th instant, and to state that they concur in the views therein expressed.

[1] Not printed.

Ministers regret the delay which has taken place in replying to His Excellency's Minutes with regard to this matter.

L. S. Jameson.

INTERPRETATION AND ADMINISTRATION OF THE ACTS RELATING TO NATURALIZATION.

Report of the Attorney-General.

April 6/7, 1904.

The Right Hon. the Secretary of State for the Colonies wishes to be furnished with the views of the Government as to the recommendations arrived at by the Naturalization Laws Committee, and set out in the Report of the 24th July, 1901.

This Committee was appointed in 1899 to report upon the doubts and difficulties which had arisen in connection with the interpretation and administration of the Acts relating to naturalization, and to advise on the legislation deemed to be expedient.

In their report they define the Law of Naturalization as that portion of the law which determines the conditions under which the rights, privileges, and duties of a British subject are acquired or lost. They point out that the status of a British subject consists of an aggregation of (1) Rights and Privileges, (2) Duties and Obligations. The former are (*a*) Political (*e.g.,* capacity to vote for members of legislative assemblies, &c., and to be elected therefor, and to hold various offices in the Military and Civil Services, and the Diplomatic Service); (*b*) Private (*e.g.* capacity to acquire and hold land, British ships, and property generally); (*c*) Rights and Privileges carried away with one to foreign countries, (*e.g.,* protection by the British Government to its subjects whilst sojourning, &c., in foreign States, the right to sue in Consular Courts, and marriage in foreign countries under the Foreign Marriages Acts). The latter include amenability to British Courts for high treason, murder and manslaughter bigamy, and offences against the Merchant Shipping and the Explosives Acts wheresoever committed. They further point out that this status is determined by (*a*) Place of birth, (*b*) Nationality, (*c*) What is termed "Naturalization," (*d*) Special Act of Parliament, and (*e*) Denization (*e.g.*, the grant by the Crown in the exercise of its Prerogative of letters admitting the grantee to the status of a British subject.

1. The Report shows how "double nationality" is, at present, inevitable. This arises from some countries considering the place of birth as the determining factor, whilst others look to the parentage, and others again still enforcing the maxim "*Nemo potest exuere patriam.*" The necessity of each person having one nationality only is obvious, and the recommenda-

tions of the Committee that conventions should be arrived at in order to prevent the occurrence is one which the Government should not only agree with, but it is questionable whether the rights of a British subject should in any case be granted to any foreigner who is not prepared and at the same time can prove that he is allowed, to alienate his existing nationality. It is in every way desirable that such persons should as far as law can make them be unequivocally British, and this requirement should, in my opinion, not only be a test in any general Imperial Act, but should be applied to local naturalization as well.

2. That the place of birth should determine nationality is in accord with English law. All persons born within the British Dominions are British subjects, whatever may be the nationality of the parents, and however temporary the residence may be. The Committee do not suggest any alteration, as they consider the place of birth such easy proof of the question of nationality.

With regard to this it is conceivable that a Colony such as ours might be jeopardised by this rule. It is possible that a large Chinese population may be imported into South Africa. It is further possible that their wives may be allowed to accompany them; and that the result may, in any case, be the birth of a large number of Chinese or half-breeds in South Africa. Those persons would be British subjects, and could not be expelled as undesirables, though their entry might be prohibited by the exercise of the Royal Prerogative if they remained foreigners.

With regard, therefore, to this recommendation, its utility is questionable, at least from the point of view of this Colony, which would not benefit, but possibly suffer, from the acquisition by numberless undesirable foreigners of Mongolian origin of the status of British subjects. It is true that our Immigration Laws could restrain their immigration, but expulsion of those born in South Africa is quite another matter.

3. "A person whose father or paternal grandfather was born "within H.M.'s Dominions is deemed to be a natural-born "subject, although he himself was born abroad." That is to say, that a person not born within the Dominions is not a British subject unless either his father or his grandfather was actually born within the Dominions.

The Committee recommend that this should be limited by enacting that no person born out of the British Dominions should be a British subject unless the "father" had been born therein, and was, at the time of birth, a British subject. The Committee do not, in my opinion, give sufficient consideration to the modern development of travelling, and the fact that, owing to the rapid civilisation and progress of comparatively uncivilised or backward countries, British subjects find themselves frequently in foreign countries in which they have no

intention of permanently residing, being there for the temporary purposes of travel or research, or of carrying on a business either mercantile or professional. It would appear to me to be better to leave the law as it is than to amend it in the manner proposed.

4. The Committee recommend that for the purpose of determining British nationality by reason of place of birth, "British Dominions" should be limited to such as have been acquired by conquest, cession or, occupation, that is to say, that protectorates and spheres of influence should not be included.

With regard to this there seems to be no objection, though, coupled with the recommendation limiting the rule as to place of birth and parentage, it may finally lead to hardships. But as regards Native or non-European peoples, the recommendation appears to be one that should be accepted.

5. The Report proceeds to point out that the law is uncertain with regard to the effect of birth at sea; and the Committee recommend that (1) a person born in a British private ship in foreign waters should be a British subject, but that a person born on board a foreign ship should not be deemed to be a British subject merely because the ship was, at the time of his birth, in British waters. This appears to be a desirable rule for adoption.

6. The Report then proceeds to deal with Naturalization proper. Naturalization by special Act of Parliament and by "denization" should continue to be available. With regard to naturalization by general Act of Parliament, it is recommended that a Standing Order should require all special Acts to embody the main enactments of the general law. This recommendation is obviously worthy of adoption.

7. Persons who are natural born or naturalized British subjects in Great Britain are British subjects throughout the Empire and the world (with certain exceptions arising from "Double Nationality"). But aliens naturalized in a Colony are only British subjects within the Colony. That is to say, a Colony cannot confer the status of British subjects so as to be of effect throughout the world, or even British Dominions.

In England it appears that there is still some difference between a natural born and a naturalized British subject. That such differences should be abolished is clearly expedient, and the Committee's recommendations therefor should be supported.

8. But their recommendation that the English requirements should form the "test" for determining the effect of local naturalization in Colonies is one which should be seriously considered. In England the only statutory requirements are (*a*) that the applicant is not a person under disability, *i.e.*, a minor, married woman, idiot or lunatic; (*b*) that he has previ-

ously resided in the United Kingdom or served under the Crown for a certain period (5 years); (*c*) that he declares his intention to permanently reside in the United Kingdom or serve the Crown.

It is entirely in the discretion of the Secretary of State to refuse any application, but these are all the conditions he may require to be fulfilled. The Committee recommend that this discretion should remain unfettered, and only suggest that instead of the "United Kingdom" the "British Dominions" should be substituted as the place of intended residence. The Committee further suggest that if any Colonial law demands solely or *inter alia* the same conditions, that naturalization under it should be effectual throughout the Dominions and the world. They recommend that local naturalization should still be possible; but that if the conditions complied with are identical with those imposed at home, the Governor should by Order in Council be empowered to grant a certificate of complete and full naturalization effectual everywhere. It is undoubtedly expedient that naturalization in one Colony should be operative in all other Colonies and throughout the world. But the conditions of acquisition should be clearer and such as would ensure undesirables not acquiring too easily the rights of British subjects. The discretion in our Colony is as unfettered as that of the Secretary of State in England. But this and other Colonies have been careful to declare fully the necessary qualifications of alien applicants. And more especially has this been done by those Colonies threatened by Asiatic—especially Chinese—invasion. And as this Colony is now in a similar position, I am of opinion that some distinction should be drawn between applicants of European descent and those of non-European descent; and that among "disabilities" should be included the "unpardoned commission of certain crimes." In England there is at present no immigration restriction. There is nothing to prevent the most undesirable persons, both white and coloured, from entering into and settling in England, or remaining long enough to be qualified to apply for letters of naturalization. There is nothing, unless the law is soon altered, as appears to be the intention, to prevent the Secretary of State from granting letters to undesirables. His discretion is unrestricted, and the Committee recommend that it should remain so. Their further recommendation that it should suffice that the applicant declares his intention to permanently reside, not in England, but anywhere within the Dominions, means that innumerable alien undesirables, after residence in England or a Crown Colony where immigration is unrestricted, may be naturalized on declaring their intention to permanently reside in South Africa. Most Colonies possessing responsible government have taken care to pass more or less drastic immigration laws, and all those who have experienced or are threatened with

Asiatic undesirable immigration have directly or indirectly prohibited it—as our own Colony—by their immigration laws.

Although the Naturalization Laws are themselves apparently in many such Colonies "equal" in their application to coloured and European aliens, *in practice they are not, because in consequence of their Immigration Laws, coloured aliens can never acquire the qualification of residence, which is a condition precedent to any claim to be naturalized.* And some Colonies go further even in their Naturalization Laws.

It is, on this question, most instructive that the Naturalization Laws of the Federal Council of Australasia only provide for recognition by all of naturalization in one of the Colonies federated of "persons of European descent."

This clearly shows an antipathy against the indiscriminate naturalizing of coloured persons.

Queensland will not naturalize an Asiatic unless he is married, in addition to requiring three years' previous residence, and refusing to confer the full status.

New Zealand specifically prohibits the naturalization of Chinese (section 18 of Act 64—1896).

Natal only naturalizes aliens of European descent (section 2 of 23—1874).

It is of vital consideration that Hong-Kong—a Crown Colony—has no Naturalization Law, and *that the Straits Settlements require no stated period of residence,* so there is nothing to prevent a Chinaman landing there and at once getting his letters; and if the recommendation of the Committee is adopted—that it shall suffice to declare intention to reside within the the Dominions—the Chinaman can at once proceed to South Africa, and can only be shut out by Act of Parliament—*i.e.,* not by prerogative.

This Colony, like the majority of self-governing Colonies, views with disfavour the naturalization of Asiatics. The number of Asiatic British subjects is already sufficiently overwhelming. Unless, therefore, Imperial legislation is so amended, as now appears to be the intention of the Imperial Government, either by an Immigration Law, or an amendment of the Law of Naturalization, so as to very considerably curtail the possible naturalization of innumerable Asiatics and non-Europeans, I am of opinion that this Colony would be unwilling to recognize the Imperial Statute as a test for determining the operation of Colonial Naturalization Laws generally throughout the Empire.

9. And there is another objection, from the Colonial point of view, to the Imperial Act as an effective model. There is nothing to prevent the blackest criminal being naturalized under that law.

Doubtless the Secretary of State would not grant letters to a known bad character, but there is no machinery provided for

discovering what his antecedents have been, and there is no prohibition against the grant of letters to criminals, *i.e.*, criminality is not a "disability" in England. Our law requires the applicant to be of good character, and a formal certificate is necessary (section 2 of Act 35—1889). Practically, treason, murder, theft, fraud, &c., disqualify the alien convicted therefor. And in this respect the law of Canada, New Zealand, Victoria, and Natal is the same.

The Crown Colonies do not impose any such disqualification.

10. An additional objection is that the Imperial Act contains no provision for the cancellation of letters obtained by fraud. Our law has such a provision, and so have the laws of New South Wales, Queensland, Victoria, South Australia, New Zealand, and Canada. I am of opinion, therefore, that naturalization in a Colony whose law satisfied the requirements of the Imperial statute should not be effective throughout the Empire, as suggested by the Committee, unless the Imperial statute is so amended as to (*a*) limit the naturalization of persons of non-European descent by practically making it impossible for such as are, in the Colonies possessing responsible government, deemed to be undesirable; (*b*) treat conviction—unpardoned—of a serious crime as a "disability"; (*c*) provide for the revocation of letters obtained by fraud. On the general question of rendering naturalization in one Colony effectual in another, it would appear that as the effect of the Naturalization and Immigration Laws in those Colonies possessing responsible government is to curtail non-European naturalization and the naturalization of criminals, this Colony would not be much prejudiced by recognizing naturalization in other self-governing Colonies, in most of which the operation of the Immigration and Naturalization Laws shuts out undesirables, or disqualifies them for naturalization. It appears that none of the Crown Colonies require the applicant to be of good character.

11. The Committee further recommend—

(*a*) That the distinction in the Imperial Act between "re-admission" and "naturalization" should not be maintained.

(*b*) That the period of residence in England should remain 5 years.

(*c*) That a certificate obtained by fraud should be voidable.

(*d*) That it should be made clear that minors, married women, idiots, and lunatics should be incapable of being naturalized.

(*e*) That certificates granted in cases of doubt should clearly disclaim any decision of the question whether or not the person was at the time of the grant a British subject.

(*f*) That the section 4 of the Naturalization Act of 1870 should be rendered clearer.

(*g*) That the law should provide, beyond doubt, that a woman who is an alien becomes a British subject by marrying a British subject; and that a woman who is a British subject ceases to be a British subject on marrying an alien; that, during coverture, the status of the wife follows that of the husband; and that on widowhood or divorce she remains vested with that status.

(*h*) That a widow, alien by reason only of marriage, should not be in a better position with regard to again becoming a British subject than aliens generally.

(*i*) That the test of nationality of minor children should be rendered more lucid.

(*j*) That children born before parents' naturalization should be capable of naturalization at same time as the parents, provided the parents declare such children are to reside with them within the Dominions, and that on majority they may make a declaration of alienage within one year.

(*k*) That children born, after naturalization, anywhere should be British subjects.

(*l*) That all children of a widow who by marriage became an alien, may be naturalized without any definite period of residence.

(*m*) That the nationality of minor children should follow that of the father.

(*n*) That the marriage of a widow—a British subject—with an alien, shall not affect the national status of her children by her past husband—a British subject.

12. All these recommendations are undoubtedly worthy of adoption, and many of them will assimilate the Imperial Law to the law of many self-governing Colonies.

13. I am of opinion, therefore, that the Secretary of State should be informed that the recommendations of the Committee are viewed with favour by Ministers, subject to the following qualifications:—

(*a*) They consider that any conviction for any serious crime such as treason, murder, culpable homicide, robbery, theft, fraud, rape, incest, forgery, perjury, should be added to the absolute "disabilities," and be a bar to the acquisition of British nationality.

(*b*) The law should discriminate between aliens who are of "European descent" and those who are not. The latter should not be on the same footing as the former; and the acquisition of British nationality by them should be subjected to effective restrictions.

(*c*) It follows that the discretion of the Secretary of State should be limited accordingly.

(*d*) If the Imperial statute is so amended, Ministers would agree to admit as British subjects aliens naturalized in other Colonies whose laws contained similar provisions. Unless such amendment is effected Ministers cannot but view with disfavour the recommendation of the Committee set out in para. 31 of their Report.

(*e*) With regard to the declaration of intention as to residence, Ministers consider that, in the case of aliens not of European descent, the declared intention should be to reside within the territorial jurisdiction under the law of which they seek admission as British subjects.

(*f*) With regard to the acquisition of nationality by place of birth, Ministers do not consider that the children, whether legitimate or illegitimate born within the Dominions of aliens imported for certain purposes, temporary in character or avowed to be temporary in character, such as labour on the mines, should be deemed to be British subjects.

(*g*) With regard to birth on British ships, Ministers do not deem it expedient that birth on a British private ship in foreign waters of children of other than parents of European descent should necessarily vest such children with British nationality.

(*h*) With regard to the limitation of the rule transmitting British nationality by parentage, this Government does not consider it desirable that the law should be altered as suggested in paragraph 10 of the Report. To provide that no person born out of the Dominions should be a British subject unless his father had been born there, and was at the time of the birth of that person a British subject, would possibly lead to hardship.

(*i*) With regard to birth within the "British Dominions," Ministers agree that the expression should be construed as limited to territory acquired by conquest, cession, or occupation. But they consider that there should be some discrimination between European and Native persons born in Protectorates and Spheres of Influence, especially if the recommendation in paragraph 10 contained is adopted. It is also conceivable that, unless some such discrimination is decided upon, that persons of European and British extraction may be outcasts with no "effective" nationality.

(*j*) With regard to the inevitable occurrence of "double nationality" Ministers fully realize the expediency of its prevention, and the necessity of International

Conventions on the subject, especially in regard to divesting foreign nationality on acceptance of British naturalization.

(*k*) With regard to acquisition of nationality by accepting service under the Government, Ministers consider that the law should be rendered more lucid, and that international agreement should be arrived at. Ministers consider that mere acceptance of any conceivable service under a foreign government should not result in acquisition of foreign nationality or less of British nationality.

Ministers consider that, in order to operate so as to divest British nationality, service under a foreign government should be such as would necessitate the acquisition of a permanent domicile, or more or less actually associate the official with the legislature or executive.

Likewise Ministers consider that Government employment of coloured aliens within the British Dominions should not be deemed to confer on such aliens the status of British subjects or in any way operate as a qualification for acquiring that status, and that the law with regard to this should be rendered indisputable.

VICTOR SAMPSON.

Enclosure 2 in No. 1.

A.D. 1907.

DRAFT OF A BILL TO CONSOLIDATE AND AMEND THE ENACTMENTS RELATING TO ALIENS AND NATURALIZATION.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

STATUS OF ALIENS.

Capacity of an alien as to property. [33 Vict. c. 14. s. 2.]

1. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a natural-born British subject: Provided that this section shall not—

(1) Confer any right on an alien to hold real property situate out of the United Kingdom, and shall not

qualify an alien for any office or for any municipal, parliamentary, or other franchise: or

(2) Entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him: or

[(3) Affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the twelfth day of May, one thousand eight hundred and seventy, or in pursuance of any devolution by law on the death of any person dying before that day.] [qu. spent.]

2. Nothing in this Act contained shall qualify an alien to be the owner of a British ship. Savings as to British ships. [33 Vict. c. 14..s.14.]

3. Where His Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for His Majesty, by Order in Council, to declare that such convention has been entered into by His Majesty; and from and after the date of such Order, any person being originally a subject or citizen of the state therein referred to, who has been naturalized as a British subject, may, within the limit of time provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration he shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid. Power of naturalized aliens to divest themselves of their status in certain cases. [33 Vict. c. 14. s. 3.]

4. An alien shall be triable in the same manner as if he were a natural-born British subject. Trial of alien. [33 Vict. c. 14. s. 5.]

Expatriation.

5.—(1) Any person who by reason of his having been born within His Majesty's dominions is a natural-born British subject, but who at his birth became under the law of any foreign state a subject also of that state, and is still such a subject, may, if of full age and not under disability, make a declaration of alienage, and from and after making the same shall cease to be a British subject [and shall be deemed to be an alien]. How British born subject cease to be such. [33 Vict. c. 14. s. 4]

(2) Any person born out of His Majesty's dominions of a father being a British subject may, if of full age, and not under disability, make a declaration of alienage, and from and after making the same shall cease to be a British subject [and shall be deemed to be an alien].

6. A British subject who, when in any foreign state and not under disability, *by any voluntary and formal act* [*whether by* Capacity of British subjects to

renounce allegiance to His Majesty. [33 Vict. c. 14. s. 6.]

obtaining a certificate of naturalization or otherwise] becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject [and shall be deemed to be an alien].

NATURALIZATION AND RESUMPTION OF BRITISH NATIONALITY.

Secretary of State may grant certificate of naturalization. [33 Vict. c. 14. s. 7.]

7. An alien who, within such limited time before making the application hereinafter mentioned as has been under any Act hereby repealed or may be allowed by the Secretary of State either by general order or on any special occasion, has resided in *His Majesty's dominions* for not less than five years or has been in the service of the Crown for not less than five years, and who intends, when naturalized, either to reside in *His Majesty's dominions,* or to serve under the Crown, may apply to the Secretary of State for a certificate of naturalization.

Proceedings to be taken to obtain certificate. [33 Vict. c. 14. s. 7.]

8. The applicant shall adduce in support of his application, evidence of his residence or service, and intention to reside or serve. The Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

Effect of naturalization. [33 Vict. c. 14. s. 7.]

9.—(**1**) A *naturalized person* shall be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, *duties and liabilities* to which a natural-born British subject is entitled or subject *and shall to all intents and purposes have, as from the date of his naturalization, the status of a natural-born British subject.*

12 & 13 Will. 3. c. 2.

(**2**) *In section three of the Act of Settlement (which disqualifies naturalized aliens from holding certain offices), the words "naturalized or" shall be repealed.*

Special certificate in case of doubt. [33 Vict. c. 14. s. 7.]

10. The Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate under this Act, or any Act hereby repealed, shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

As to aliens naturalized before the Act. [33 Vict. c. 14. s. 7.]

11. An alien who has been naturalized before the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and the Secretary of State may grant to him a certificate on *such* terms and conditions as *he may think fit.*

12.—(**1**) *Where it appears to the Secretary of State that a certificate of naturalization has been obtained by false representations or fraud the Secretary of State may by order revoke the certificate, and the order of revocation shall have effect from such date as the Secretary of State may direct.* Revocation of certificate of naturalization.

(**2**) *Where the Secretary of State revokes a certificate of naturalization he may order the certificate to be given up and cancelled, and any person refusing or neglecting to give up the certificate shall be liable on summary conviction to a fine not exceeding one hundred pounds.*

13. Where any British subject has become an alien, he shall not thereby be discharged from any obligation, duty, or liability in respect of any act done before he so became an alien. Saving of allegiance prior to expatriation. [33 Vict. c. 14. s. 15.]

National Status of Married Women and Infant Children.

14. A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject. National status of married women. [33 Vict. c. 14. s. 10 (1).]

Alternative.—As regards married women, the wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien.

15. A woman being a natural-born British subject, who by or in consequence of her marriage has become an alien, shall not, by reason only of the death of her husband, cease to be an alien. Status of widows. [33 Vict. c. 14. s. 10 (2).]

16. *The status of a divorced woman shall be the same as the status of a widow.* Status of divorced women.

17.—(1) *Where an alien obtains a certificate of naturalization, the Secretary of State may, if he thinks fit, on the application of that alien, include in the certificate the name of any child born before the date of the certificate, and that child shall thereupon become a British subject; but any child so naturalized may, within one year after attaining his majority, make a declaration of alienage, and shall thereupon cease to be a British subject.* Status of children.

[(2) *Every child of a naturalized father born after naturalization shall be deemed to be a British subject.*] [Qu. in cl. 9.]

(3) *Subject to the provisions of the next succeeding subsection, where a British subject becomes an alien, whether by declaration of alienage or otherwise, every child of that person, being a minor, shall thereupon cease to be a British subject* [*whether he be resident with his father or not*].

(4) *Where a widow, who is a British subject, marries an alien, any child of hers by her former husband shall not by reason only of her marriage, cease to be a British subject*

[whether he is residing outside His Majesty's dominions or not].

(5) *Where a woman who was a British subject, has lost her nationality by or in consequence of her marriage, and is thereafter left a widow, the Secretary of State may, if he thinks fit, grant a certificate of naturalization to any child of that marriage, although the conditions described in section eight of this Act have not been complied with.*

Alternate.—(5) *The Secretary of State may, in his discretion, and for good cause shown, grant a certificate of naturalization to any minor, although the conditions described in section eight of the Act have not been complied with.*

(6) *Except as provided by this section, a certificate of naturalization [or alienage] shall not be granted to any person under disability.*

PROCEDURE AND EVIDENCE.

Regulations to be made by Secretary of State [33 Vict. c. 14. s. 11. 33 & 34 Vict. c. 102. s. 1.]

18. The Secretary of State may *make regulations for carrying into effect the objects of this Act, and in particular* make such regulations as he thinks fit in respect of the following matters:—

(1) The form and registration of certificates of naturalization in the United Kingdom.

(2) The form and registration of declarations of alienage:

(3) The registration by officers in the diplomatic or consular service of His Majesty of the births and deaths of British subjects born or dying out of His Majesty's dominions:

(4) The persons by whom the oath of allegiance may be administered, *and the persons before whom declarations of naturalization and alienage may be made:*

(5) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested:

(6) The registration of such oaths:

(7) The persons by whom certified copies of such oaths may be given:

(8) The transmission to the United Kingdom, for the purpose of registration or safe-keeping, or of being produced as evidence, of any declarations, certificates, or oaths made or taken in pursuance of this Act or of any Act hereby repealed out of the United Kingdom, or of any copies thereof, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of this Act or any Act hereby repealed:

(9) The proof in any legal proceeding of such oaths:

(10) With the consent of the Treasury the imposition and application of fees in respect of any registration authorized to be made by this Act or any Act hereby

repealed, and in respect of the making of any declaration or the grant of any certificate authorized to be made or granted by this Act or any Act hereby repealed, and in respect of the administration or registration of any oath.

Effect of regulations. [33 Vict. c. 14. s. 11.]

19. Any regulation made by the said Secretary of State in pursuance of this Act [or of any Act hereby repealed] shall be of the same force as if it had been enacted herein, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such regulation may for the time being be in force.

Regulations as to evidence of declarations. [33 Vict. c. 14. s. 12.]

20. Any declaration made under this Act, or under any Act hereby repealed, may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by the Secretary of State, or by any person authorized by him in that behalf, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date therein mentioned.

Evidence of certificate of naturalization. [33 Vict. c. 14. s. 12.]

21. A certificate of naturalization may be proved in any legal proceedings by the production of the original certificate, or of any copy thereof certified to be a true copy by the Secretary of State, or by any person authorized by him in that behalf.

Entries in registers. [33 Vict. c. 14. s. 12.]

22. Entries in any register made in pursuance of this Act, or under any Act hereby repealed, shall be proved by such copies and certified in such manner as may be directed by the Secretary of State, and the copies of such entries shall be evidence of any matters by this Act or by any Act hereby repealed, or by any regulation of the Secretary of State, authorised to be inserted in the register.

Application of 31 & 32 Vict. c. 37. to regulations.

23. The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State, in pursuance of this Act or of any Act hereby repealed.

Penalty on making false declaration. [33 & 34 Vict. c. 102. s. 2.]

24. Any person wilfully and corruptly making or subscribing any declaration under this Act, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for any term not exceeding twelve months.

Form of oath of allegiance. [33 Vict. c. 14. s. 9.]

25. The oath of allegiance shall be in the form set forth in the First Schedule to this Act.

Powers of Colonial Legislatures and Governors.

Naturalization of aliens in British dominions outside the United Kingdom.

26.—(1) *Where it appears to His Majesty in Council that under any law for the time being in force in any British possession, the conditions to be fulfilled by aliens with respect to naturalization are substantially the same as those required for the grant of certificates of naturalization under this Act, His Majesty may by Order in Council empower the Governor of that possession in his discretion to grant to any person naturalized in that possession a certificate of naturalization in the prescribed form, and that certificate shall have effect to all intents and purposes as if it were a certificate of naturalization granted by the Secretary of State under this Act.*

(2) *His Majesty may revoke any such Order if it appears to His Majesty that the law of the British possession referred to in the Order has been so altered as to make it inexpedient that the Order should continue in force.*

(3) *As regards any British possession with respect to which no such Order in Council has been made, or with respect to which the Order in Council has been revoked, the Governor of that possession may, in the prescribed form, and subject to any regulations made by the Secretary of State, make a recommendation to the Secretary of State that a certificate of naturalization should be granted to any specified alien resident or serving the Crown in that possession, and thereupon the Secretary of State may, if he thinks fit, grant a certificate of naturalization accordingly.*

(4) *Where in any British possession there is a Governor-General and also subordinate governors, the expression "Governor" means the Governor-General, and in the case of India means Governor-General in Council.*

Power of colonies to legislate with respect to local naturalization. [33 Vict. c. 14. s. 16.]

27. All laws, statutes, and ordinances made by the legislature of a British possession for imparting to any person any of the privileges of naturalization to be enjoyed by him within the limits of that possession, shall within those limits have the authority of law, but subject to be confirmed or disallowed by His Majesty.

Natural-born British Subjects.

Definition of natural-born British subject. [25 Edw. 3, stat. 1. 7 Anne, c. 5. 4. Geo. 2. c. 21.]

28.—(1) *The following persons shall be deemed to be natural-born British subjects namely,—*

(a) *Any person born in His Majesty's dominions* [*and ligeance*]*; and*

(b) *Any person born out of His Majesty's dominions, whose father was born in His Majesty's dominions, and was a British subject at the time of that person's birth; and*

(c) *Any person born on a British ship* [*whether in foreign territorial waters or not*].

(2) *A person born on a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth.*

(3) *The British Nationality Act, 1772, which naturalizes under certain conditions the grandchildren of natural-born British subjects born abroad, is hereby repealed.* 13 Geo. 3. c. 21.

Supplemental.

29. Nothing in this Act shall affect— Saving of letters of denization, &c. [33 Vict. c. 14. s. 13.]

(1) the grant of letters of denization by His Majesty; or

(2) *the ex-territoriality of embassies and diplomatic missions; or*

(3) *the status of the child of an alien enemy.*

30. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule. Repeal of Acts]

31. In this Act, unless the context otherwise requires— Definitions. [33 Vict. c. 14. s. 17.]

"Disability" means the status of being an infant, lunatic, idiot, or married woman:

"Prescribed" means prescribed by regulations under this Act.

32. This Act may be cited as the Aliens and Naturalization Act, 1907. Short title. [33 Vict. c. 14. s. 1.]

SCHEDULES.

FIRST SCHEDULE.

OATH OF ALLEGIANCE. Cf. 33 Vict. c. 14. s. 9.

"I do swear that I will be faithful and bear true allegiance to His Majesty King Edward the Seventh, his heirs and successors, according to law. So help me GOD."

[N.B.—In the case of persons entitled and wishing to affirm, this form may be modified in manner prescribed by the Oaths Act, 1888.] 51 & 52 Vict. c. 46.

SECOND SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 Edw. 3, stat. 1.	Statute for those who are born in parts beyond the seas.	From "and in the right of other children" to the end of the statute,
12 & 12 Will 3, c. 2.	The Act of Settlement	In section three the words "naturalised or."
7 Anne, c. 5...	The Foreign Protestants (Naturalization) Act, 1708	The whole Act.
4 Geo. 2, c. 21.	The British Nationality Act, 1730.	The whole Act.
13 Geo. 3, c. 21,	The British Nationality Act, 1772,	The whole Act.
33 Vict. c. 14 .	The Naturalization Act, 1870.	The whole Act.
33 & 34 Vict. c. 102.	The Naturalization Oath Act, 1870.	The whole Act.
35 & 36 Vict, c. 39.	The Naturalization Act, 1872.	The whole Act.
58 & 59 Vict. c. 43.	The Naturalization Act, 1895.	The whole Act.

(Enclosure 4 in No. 1.)

LAW OF ALIENS AND NATURALIZATION BILL.

MEMORANDUM.

Nationality at common law.

§ 1. Every natural person is either a British subject or an alien.

At common law every person born within the dominions and ligeance of His Majesty is a British subject, and every person born outside those dominions and ligeance is an alien.[1] *Prima facie,* dominions and ligeance are co-extensive, but the common law recognizes two possible exceptions. In the first place it recognizes the ex-territoriality of embassies and diplomatic missions, and in the second place it seems that the child of an alien enemy born in British territory during the hostile occupation of that territory is not a British subject.[2]

A person born on a British ship is deemed to have been born in the British dominions, whether the ship be on the high seas or in foreign territorial waters, and whether his parents be British or alien, and whether he be legitimate or illegitimate.[3]

[1] Comyn's *Digest,* tit. Alien (A) and (B). Calvin's case (1608) 7 Rep. 1; 2 St. Tr. 559. This is the normal rule. As to the complications introduced by the acquisition or loss of territory through cession or conquest, see *Post,* p. 9, § 10.

[2] Comyn's *Digest,* tit. Alien (A) (B). Hall's *Foreign Jurisdiction of the Crown,* p. 18.

[3] Hall's *Foreign Jurisdiction of the Crown,* p. 18.

§ 2. The maxim of the common law is *nemo potest exuere patriam, i.e.,* once a British subject always a British subject, and once an alien always an alien.[1] But this simple and unbending rule has been altered by a series of statutes. In the first place the common law definition of "natural-born British subject" has been extended by statute so as to include, under certain conditions, the children and grandchildren of such subjects. Natural-born subjects by statute.

By 25 Edw. 3,[2] children born without the ligeance of the King, *i.e.,* in foreign countries, whose fathers and mothers at the time of their birth are in the faith and ligeance of the King, are to be deemed to be British subjects and capable of inheriting.

By the Foreign Protestants (Naturalization) Act, 1708 (7 Anne, c. 5), the children of all natural-born subjects born out of the ligeance of Her Majesty are to be deemed to be natural-born subjects of this kingdom to all intents and purposes whatsoever.

By the British Nationality Act, 1730 (4 Geo. 4, c. 21), which was passed to remove doubts, it is provided that all children born out of the ligeance of the Crown, whose fathers were or shall be natural-born subjects at the time of the birth of those children, shall be deemed to be natural-born subjects to all intents and purposes, but there is an exemption in the case of children born of persons who have been attainted of treason, or outlawed.

By the British Nationality Act, 1772 (13 Geo. 3, c. 21), British nationality was extended to the children of fathers who were treated as natural-born British subjects under the previous Acts. The effect of this statute is that the grandchild of a person born in British dominions is to be deemed to be a British subject.

Having regard to more recent statutes relating to alienage, the operation of the statutes cited above must clearly be confined to children whose fathers were British subjects at the time of their birth.[3] Take the case of a child born in America whose father was also born in America, but whose grandfather was born in England, but afterwards became an American subject. Clearly that child is an American and not a British subject. Probably the effect of the statutes may be summed up as follows:—

The following persons are deemed to be natural-born British subjects, namely:—

> Any person born outside His Majesty's dominions whose father was born in His Majesty's dominions, and was a British subject at the time of that person's birth; and also

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[1] See Broom's *Legal Maxims*, ed. 4 p. 75. The older form of maxim runs:—*Nemo patriam in qua natus exuere nec ligeantiae debitum ejurare possit.*

[2] Stat. 1, Revised edition.

[3] Dicey's *Conflict of Laws*, p. 177.

Any person born outside His Majesty's dominions whose paternal grandfather was born in His Majesty's dominions, and whose father was a British subject at the time of that person's birth.

Any other person born outside His Majesty's dominions is an alien.

Naturalization and alienage by statute.

§ 3. In the second place legislation has now made provision (*a*) for the naturalization of aliens, and (*b*) for the expatriation of British subjects.

Before the year 1844 the only way in which an alien could acquire the rights of a British subject was by obtaining a special Act of Parliament. The general Act passed in that year, viz., 7 & 8 Vict. c. 66 (an Act to amend the Law relating to Aliens), made provisions for the naturalization of aliens who should take the prescribed oath and become residents in the United Kingdom. This Act is now repealed by the Act of 1870.

By the Naturalization Act, 1870 (33 & 34 Vict. c. 14), further provision was made for the naturalization of aliens, and the power of expatriation under certain conditions was conferred on British subjects.

The main amendments of the law effected by the Act of 1870 were:—

(1) Removal of the restrictions upon the acquisition and holding of real and personal property by aliens in the United Kingdom, except property in British ships.

(2) Requirement, as a condition of a grant of a certificate of naturalization, of residence for five years in the United Kingdom, or of service under the Crown for the same period, and of intention of continuing so to reside or serve after naturalization.

(3) Limitation of the principle that British nationality is indelible (*a*) by permitting a natural-born British subject who also at his birth became a subject of a foreign State, to divest himself of British nationality; (*b*) by making the loss of British nationality a necessary and immediate consequence of voluntary naturalization in a foreign country.

(4) Detailed provisions as to the effect of naturalization or loss of nationality by the husband or father upon the status of the wife and children.

(5) Provisions for the re-admission or re-naturalization of a person who had lost his British nationality.

By the Naturalization Oath Act, 1870 (33 & 34 Vict. c. 102) further power of making regulations was bestowed on the Secretary of State especially with regard to oaths of allegiance, and a penalty for making false declarations was imposed.

By the Naturalization Act, 1872 (35 & 36 Vict., c. 39), renunciations of naturalization or nationality made under the

Supplementary Convention with the United States, dated the 23rd of February 1871, are confirmed, and are to be deemed to be authorized by the Act of 1870. Presumably, it will not be necessary to re-enact this provision in a new Consolidation Act.

By the Naturalization Act, 1895 (58 & 59 Vict. c. 43), s. 10 of the Naturalization Act, 1870, was amended in respect of the children of naturalized British subjects when the father was in the service of the Crown outside the United Kingdom, and residence with the father outside the United Kingdom was put on the same footing as residence in the United Kingdom.[1]

The Appendix to the Report of the Interdepartmental Committee sets out the laws and ordinances of the various British colonies and possessions dealing with naturalization and alienage within their resective territories.[2]

Status of alien enemy.

§4. An alien is either an alien enemy or an alien friend. Speaking broadly, the rights of an alien enemy, whether proprietary or contractual, are suspended during hostilities, but revive on the renewal of peace. An alien enemy, unless under the King's license, cannot sue in our courts, and a contract made with him during hostilities is illegal.[3] But the plea that the plaintiff is an alien enemy is only a plea in abatement,[4] therefore, under certain limitations, he can sue after peace on a contract made before the war. According to the common law theory, anyone might seize the property of an alien, but this rule is now confined to capture under the authority of the executive according to the rules of modern warfare.[5]

Status of alien friend.

§5. Speaking generally, an alien friend while staying in the King's dominions has the temporary, as opposed to the permanent, rights and duties of a British subject. He may sue and be sued; he enjoys the protection of the law and therefore is bound to obey it, but his allegiance is strictly local and temporary. He cannot be a Privy Councillor or a Member of Parliament, nor can he hold any public office, whether civil or military, or exercise any franchise, whether parliamentary or municipal.[6]

At common law an alien could not acquire or inherit real property;[7] but this disqualification has now been removed by

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[1] For the regulations made by the Secretary of State, the Colonial Office, and the India Office under the Naturalization Acts above referred to, *see Statutory Rules and Orders Revised*, Vol. 1, p. 1.

[2] As to the effect of conflict between the English Act of 1870 and Colonial Laws, *see* Hall's *Foreign Jurisdiction of the Crown*, p. 30.

[3] Anson's *Law of Contract*, ed. 8, p. 19; Comyn's *Digest*, tit. Alien (C). See Janson *v.* Driefontein Consolidation Mines, A.C. (1902) at p. 499, *per* Lord Davey.

[4] Comyn's *Digest*, tit. Abatement. For form of plea, *see* Bullen and Leake's *Precedents of Pleading*, ed. 3, p. 475.

[5] Stephen's *Commentaries*, ed. 7, Vol. 2, p. 17.

[6] Comyn's *Digest*, tit. Alien; Anson's *Law and Customs of the Constitution*, Vol. 2, p. 68; *Encyclopaedia of the Laws of England*, tit. Alien. See also s. 3 of the Acts of Settlement (12 and 13 Will. 3, c. 2) as to office. As to local franchise, *see* 45 and 46 Vict. c. 50, s. 9, and 63 and 64 Vict. c. 49, s. 106. As to the Parliamentary franchise, *see* Isaacson *v.* Durant (1886), 17 Q.B.D. 54.

[7] Comyn's *Digest*, tit. Alien (C.); Pollock and Maitland's *History of English Law*, Vol. 1, p. 441.

s. 2 of the Naturalization Act, 1870 (33 & 34 Vict., c. 14, s. 2). An alien has always been able to hold and dispose of personal property, with this exception, that he cannot own a British ship or any share therein.[1] Formerly an alien charged with a criminal offence was entitled to be tried by a jury *de medietate linguæ*, but this rule has now been abrogated by s. 5 of the Naturalization Act, 1870.

The enlistment of aliens in the Army[2] is now regulated by s. 95 of the Army Act (44 & 45 Vict., c. 58), which provides as follows:—

(1) Any person who is for the time being an alien may, if Her Majesty thinks fit to signify her consent through a Secretary of State, be enlisted in Her Majesty's regular forces, so, however, that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in Her Majesty's regular forces than that of a warrant officer or non-commissioned officer.

(2) Provided that notwithstanding the above provisions of this section any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this part of this Act, and when so enlisted shall, while serving in Her Majesty's regular forces, be deemed to be entitled to all the privileges of a natural-born British subject.

Though Cyprus is in theory under the surzerainty of Turkey, for the purpose of the Army Act (44 & 45 Vict., c. 58), Cyprus is by s. 190 (23), included in the term "colony."

By the Registration of Aliens Act, 1863 (6 & 7 Will. 4, c. 11), the master of every ship arriving in the United Kingdom from foreign parts was bound to furnish the Customs authorities with a list of all aliens not being part of the crew, landing in the United Kingdom, and all aliens arriving in the United Kingdom were bound to make a declaration stating the country to which they belonged, and producing passports (if any). This Act fell into desuetude, with the abolition of the passport system, but since 1890 its operation has been partially revived, and alien lists of steerage passengers are compiled for certain ports.[3]

Comparing the status of a British subject with the status of an alien, the Inter-Departmental Committee say[4]:—

"The rights and privileges which constitute the status of a "British subject are mainly the political rights and the "capacities for the acquisition and holding of property men-

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[1] *See s.* 14 of the Naturalization Act, 1870, and s. 1 of the Merchant Shipping Act, 1894 (57 and 58 Vict. c. 60).

[2] For the history of the law on this subject, see *Manual of Military Law*, ed. 1899, page 242. *See* also note on the employment of foreign soldiers in Clode's *Military Forces of the Crown*, Vol. 2, p. 431.

[3] *See* Parliamentary Paper C. 7406, Board of Trade (Alien Immigration).

[4] Report of Inter-Departmental Committee, Naturalization Laws, Cd. 723, 16th July, 1901.

"tioned later in this report; and, what are perhaps of still "greater practical importance, those personal rights and privi- "leges which a British subject carries with him into foreign "countries The principal of these are (1) the privilege of "protection, subject to any paramount obligation which he may "be under to any other State of which he is also a subject or "citizen; (2) the right and liability to become a party to pro- "ceedings in British Consular Courts established under the "Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37); (3) the "right to be married in foreign countries under the provisions "of the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23). On "the other hand, there are special liabilities imposed on British "subjects for acts committed in foreign countries. A British "subject is amenable to British courts for treason (35 Hen. 8. "c. 2), for murder, or manslaughter committed in a foreign "country (24 & 25 Vict. c. 100. s. 9), and for bigamy (24 & "25 Vict. c. 100. s. 5). The law is the same with regard to "certain offences under the Merchant Shipping Act, 1894 "(57 & 58 Vict. c. 60), and the Explosive Substances Act "(46 & 47 Vict. c. 3. s. 3). In some parts of His Majesty's "dominions, especially in British India, the liability of a "British subject for offences committed outside the limits of the "Possession is much more extensive. There are also contained "in most treaties of extradition special provisions affecting the "surrender of the subjects of the country from which the "surrender is demanded." In addition to the statutes cited above, reference may be made to the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), which is "An Act to regulate the "conduct of Her Majesty's subjects during the existence of "hostilities between foreign States with which Her Majesty "is at peace."

The right of the Crown to prevent foreigners from entering its dominions, or to expel them when they have entered, is exceedingly indefinite. "Alien friends," says Mr. Chitty,[1] writing in 1820, "may lawfully come into the country without any "license or protection from the Crown, though it seems that the "Crown, even at common law and by the law of nations pos- "sesses a right to order them out of the country, or prevent "them from coming into it whenever His Majesty thinks pro- "per." But from want of machinery and otherwise, it is clear that these powers, in so far as they now exist, could only be exercised under the authority of a statute. In 1873, speaking of the extradition of a Chinaman charged with murder on the high seas, Lord Justice Mellish said,[2] "There is no doubt that in "England no treaty unconfirmed by Act of Parliament would "be sufficient to enable a person to be given up. How far that "may be so in a Crown Colony I do not know."

In 1891, the Privy Council upheld the validity of a law passed in the Colony of Victoria to exclude Chinese immi-

[1] *Prerogatives of the Crown*, p. 49.
[2] Attorney-General *v.* Kwok-a-Sing (1873), L.R., 5 P.C., at p. 189.

grants, and proceeded to say[1]: "Quite apart from statute, the "case raises a grave question as to the plaintiff's right to main- "tain the action. He can only do so if he can establish that an "alien has a legal right, enforceable by action, to enter British "territory. No authority exists for the proposition that an "alien has any such right. Circumstances may occur in which "the refusal to permit an alien to land might be such an inter- "ference with international comity as would properly give rise "to diplomatic remonstrance by the country of which he was "native, but it is quite another thing to assert that an alien "excluded from any part of Her Majesty's dominions by the "executive government there can maintain an action in a Brit- "ish court."

In India, under the Foreigners Act, 1864 (Act III. of 1864), the Governor-General in Council may, by writing, order any foreigner to remove himself from British India, and to remove himself therefrom by a particular route, to be specified in the order, and local Governments have the like power. This Act was apparently passed to give effect to s. 84 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), which requires the Governor-General in Council to make laws or regulations providing for the prevention or punishment of the illicit entrance into or residence in British India of persons not authorised to enter or reside therein.

The Alien Act of 1815 (55 Geo. 3. c. 54), contained an express power to the Crown to exclude aliens from the country. "It was passed," says Mr. Chitty[2] "for the purpose of vesting "extraordinary powers in the King and magistracy, in order "that the country might be protected against aliens; it con- "tains various wholesome provisions for that purpose." But the Act was repealed as obsolete by the Statute Law Revision Act of 1873.

The whole question of the power to exclude aliens from British territory is carefully discussed in an article by Mr. Haycraft entitled "Alien Legislation and the Prerogative of the Crown" in the *Law Quarterly Review* for 1897, pp. 165-186.

Status of naturalized person.

§ 6. The status of a person who is naturalized under a private Act presumably depends on the terms of the Act itself. By s. 7 of the Naturalization Act, 1870 (33 & 34 Vict. c. 14) an alien naturalized under that Act is entitled *in the United Kingdom* to all political and other rights, powers, and privileges, and is subject to all obligations to which a natural-born British subject is entitled and subject in the United Kingdom, with the qualification that when he is within the limits of the State of which he was a subject, he is not to be deemed a British subject unless he has ceased to be a subject of that State in pursuance of the law of that State or a treaty to that

[1] Musgrove *v.* Chunk Teeong Toy (1891), A.C., at p. 282.
[2] *Prerogatives of the Crown*, p. 49.

effect. This provision presumably overrides the provisions of s. 3 of the Act of Settlement (11 & 12 Will. 3. c. 2), which provides that a naturalized person is not to be a Privy Councillor or Member of Parliament, or to hold any office or place of trust either civil or military.[1]

Mr. Westlake points out that it is not to be assumed that the child born abroad of a naturalized father is a British subject. The statutes cited above which naturalize children and grandchildren born abroad refer only to natural-born British subjects.[2]

Status of denizen.

§ 7. By s. 13 of the Naturalization Act, 1870, nothing in that Act is to affect the grant of letters of denization by the Crown. Now that naturalization has been made easy, letters of denization are seldom resorted to. The status of a denizen is thus described by Mr. Chitty[3]:—"Denization enables "the alien to purchase, and to transmit lands by descent, &c., "but does not qualify him to take any degree of nobility, or "to sit in Parliament, be of the Privy Council, or hold any "office of trust, civil or military, or take any grant of lands "from the Crown. This prerogative cannot be delegated by "the Crown to anyone, and should be granted according to the "statute 32 Hen. 8. c. 16. s. 7, with a proviso in the letters "patent, that the denizen shall be obedient to the statutes in "force before the making of that statute, but such proviso does "not constitute a condition, and therefore the denization is "not avoided by the denizen being guilty of a breach of the "laws. Denization may be granted for life, or for years, or "to the alien born, and the heirs of his body, or to the heirs "generally, or for particular purposes and intents, and in cer-"tain places and no further, or upon condition." Letters patent of denization have to issue from the Clerk of the Crown in Chancery, and the fee therefore is 18*l*.[4]

Status of protected person.

§ 8. Where the Crown exercises foreign jurisdiction in oriental or more or less uncivilized countries, foreigners are sometimes placed under the protection of the Crown, but the status of such protected persons is very vague and indefinite. To secure them a fair trial they are triable in our courts, and not in the courts of the native country.[5]

The status of the subject of a native State in India is peculiar, owing to the general surzerainty of the British Crown, and to the rule which does not allow those States to have any foreign diplomatic relations. S. 15 of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), provides that where any Order in Council made in pursuance of the Act extends to persons enjoying Her Majesty's protection, that expression

[1] As throwing light on this question, *see* ss. 1 and 6 of the Aliens Act, 1844 (7 and 8 Vict. c. 66), now repealed.

[2] Westlake's *Private International Law*, ed. 3, p. 327; cf. *re* Bouragoise (1889), 41 Ch. Div. 310, C.A.

[3] *Prerogatives of the Crown*, p. 15, and Comyn's *Digest*, tit. Alien (D).

[4] Statutory Rules and Orders, 1899, p. 1566.

[5] *Cf.* Hall's *Foreign Jurisdiction of the Crown*, pp. 142-3, *see e.g.*, Morocco Order in Council of 1899, Art. 11.

shall include all subjects of the several princes and States in India (*i.e.* India as opposed to British India).[1]

Double nationality.

§9. English law cannot of course operate beyond His Majesty's Dominions, and, however wide the words of a statute may be, it is always to be considered, if possible, as not contemplating any infringement of international law, or affecting the status of foreigners outside the British dominions.[2] Each country must legislate for its own subjects. It follows, therefore, that a person who, according to English law is a British subject, may, according to the law of some foreign States, be also a subject of that State, and this, theoretically, gives rise to many legal complications. For example, the son of French parents born in England is, according to English law, an English subject, while according to the law of France he is a French subject (*see* Code Napoléon, section 10). English law in the main regards the place of birth, while the laws of most foreign countries look rather to the nationality of the father.[3] English law is founded on the feudal principle of allegiance, while foreign law for the most part is founded on the Roman principle of citizenship determined by descent.[4] But, as Mr. Hall points out, not much practical difficulty arises except through the performance of certain kinds of voluntary acts by the individual in doing which he would follow the law of the country which he preferred; his nationality would only come into play if he stood in need of protection, or if a demand were made for his extradition.[5] It is, however, obviously convenient that future legislation should, where possible, avoid the creation of double nationality.

Effect on status of cession or conquest.

§ 10. Akin to the question of double nationality are the complications introduced by the acquisition or loss of territory through cession or conquest, or the dissolution of the personal bond where two kingdoms are united under the same Crown. Mr. Westlake thus sums up the law on these questions:—"The "cession of British territory or the acknowledgment of its "independence causes the loss of their British nationality by "all persons domiciled within it at the date of the cession, "unless they transfer their domicile to some territory which "remains British, either at once, or within the time limited "for that purpose by treaty.[6] While the Crowns of two "countries are held by the same person, the inhabitants of the "two countries are not aliens in the two countries respectively, "but the common nationality is dissolved by the dissolution of "the personal tie."[7]

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[1] See this question discussed in Hall's *Foreign Jurisdiction of the Crown*, p. 127.

[2] Hardcastle on Statutes, ed. 3, p. 415.

[3] See Hall's *Foreign Jurisdiction of the Crown*, p. 60.

[4] Westlake, *Private International Law*, ed. 3, p. 323.

[5] Hall's *Foreign Jurisdiction of the Crown*, p. 55.

[6] Westlake's *Private International Law*, ed. 3, p. 330; Deov. Mulcaster (1826), 5 B. & C. 771.

[7] Westlake, p. 331; *cf.* Isaacson *v. Durant* (1886), 17 Q.B.D. 54, where a person resident in the United Kingdom but born in Hanover before the accession of the Queen, which disunited the two crowns, was held not entitled to vote at a Parliamentary election.

§11. The law of domicile presents many analogies with the law of nationality, but domicile and nationality are wholly distinct. A Frenchman may be domiciled in England, and his personal status may be affected thereby, while an Englishman may be domiciled in France with the like results. Status of domiciled person.

The term "domicile" is used rather loosely. Strictly a man is said to be domiciled in the country where he resides with the intention of permanently abiding there; but it is sometimes used with reference to any fixed place of residence as opposed to a mere visit. Referring to the term in its strict sense, Mr. Westlake says[1]:—"The personal statute or law, with domicile "as its criterion, is applied in England, to some extent or other "with regard to guardianships, the capacity to marry and enter "into other contracts, the effect of marriage on property, the "legitimation of children by the subsequent marriage of their "parents, the succession to movable property on death, and the "transfer of property not at the time within any territorial "jurisdiction."

Comparing the law of domicile with the law of nationality, it may be noted that the domicile of a child is *primâ facie* the domicile of his father at the time of his birth, that the domicile of a married woman follows the domicile of her husband, and that the domicile of a person under disability cannot be changed by his Act while that disability lasts. But there, for the most part, the analogies cease. Nationality in the main is a question of law; domicile in the main is a question of fact. Apart from statute, a man cannot change his allegiance, for that is a bilateral obligation imposed by law; but he can change his domicile, for that is a question of residence plus the *animus manendi*. So, though a man may have a double nationality and owe double allegiance, he can in strctness have only one domicile.[2] Lord Westbury puts the cases as follows:[3]—"The law of England, "and of almost all civilised countries, ascribes to each indivi- "dual at his birth two distinct legal states or conditions, one by "virtue of which he becomes the subject of some particular "country, binding him by the tie of natural allegiance, and "which may be called his political status; another by virtue of "which he has ascribed to him the character of a citizen of "some particular country, and as such is possessed of certain "municipal rights and subject to certain obligations, which "latter character is the civil status or condition of the indivi- "dual, and may be quite different from his political status. "The political status may depend on different laws in different "countries, whereas the civil status is governed universally by "one single principle, namely, that of domicile, which is the "criterion established by law for the purpose of determining

[1] *Private International Law*, ed. 3, p. 287.
[2] See Dicey's *Conflict of Laws*, pp. 79-172; Westlake's *Private International Law*, pp. 284-322; Encyclopædia of the Laws of England, tit. Domicile.
[3] Udny *v.* Udny, 2 L.R. (1869), Sc. Ap., at p. 457.

"civil status. For it is on this basis that the personal rights "of the party, that is to say, the law which determines his "majority or minority, his marriage, succession, testacy, or "intestacy, must depend."

Status of foreign corporation.

§ 12. The status of a body corporate is determined by analogies, more or less inexact, drawn from the law of natural persons. For the most part, the status of a foreign corporation depends on its domicile, and questions of nationality are wholly irrelevant.[1] Obviously, an English corporation doing business in England might consist mainly or wholly of foreign shareholders, and a foreign corporation doing business abroad might consist mainly or wholly of English shareholders, but the nationality of the shareholders and the nationality of the corporation itself could only give rise to practical consequences in the case of war. In time of war, difficult questions may arise as to how far a foreign corporation is to be regarded as an alien enemy. The point was raised and discussed, but by no means decided, in a recent case,[2] and it is hardly possible at present to formulate any rules on the subject.

M. D. CHALMERS.

November, 1902.

Enclosure 5 in No. 1.

ALIENS AND NATURALIZATION BILL.

MEMORANDUM.

The object of this Bill is to consolidate, with amendments, the existing Naturalization Acts and the enactments which put the children born abroad of natural-born British subjects on the footing of natural-born subjects. Amendments of the existing law are shown in italics. In accordance with the report of the Inter-Departmental Committee, the provisions which relate to the re-admission to British nationality of expatriated British subjects have been omitted. It may also be noted that the phrase "statutory alien" has, in consequence, been got rid of.

Clause 1.

Capacity of an alien as to property.

This clause reproduces section 2 of the Naturalization Act, 1870 (33 & 34 Vict. c. 14). The first proviso is clearly right. The right of an alien to hold real property in other parts of the King's dominions must clearly depend on the *lex loci rei sitæ*. In the first place, this is the universal rule as to realty;

[1] Cf. Westlake's *Private International Law*, ed. 3, ch.

[2] Driefontein Consolidated Gold Mines *v.* Janson (1901), 2 K.B., 419, C.A., affirmed A.C., 1902, p. 484.

and in the second place, it would be very awkward to give aliens a right to acquire land in fortified possessions, such as Aden and Gibraltar. The third proviso may probably be omitted, as it would be sufficiently covered by the savings annexed to every repeal by section 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Clause 2.

Saving as to British ships.

This clause is in the nature of a saving, but it is so important that it seems better to retain it in a separate clause, as was done by section 14 of the Naturalization Act, 1870. The ownership of British ships and of any shares therein is regulated by section 1 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

Clause 3.

Power of naturalized aliens to divest themselves of their status in certain cases.

It may be a question whether section 2 of the Naturalization Act, 1872 (35 & 36 Vict. c. 39), should be reproduced as a subsection to this clause. That section was passed to remove doubts as to whether the supplementary convention with the United States dated 13th May 1870 (regarding renunciation of nationality under the convention) was authorized by the Act of 1870. It is not clear what the nature of the doubts was, and the question may require further consideration.

Clause 4.

Trial of alien.

This clause reproduces section 5 of the Naturalization Act, 1870, with the omission of the words which abolished the jury *de medietate linguæ*. Those words were repealed by a Statute Law Revision Act when they had done their work.

Clause 5.

How British-born subjects may cease to be such.

This clause reproduces section 4 of the Naturalization Act, 1870, but the addition of the words in brackets seems required for uniformity of language with other parts of the Bill.

Clause 6.

Capacity of British subjects to renounce allegiance to His Majesty.

This clause reproduces the first paragraph of section 6 of the Naturalization Act, 1870, with the substitution of the words "by any voluntary and formal act" for the word "voluntarily." The object of this change, which is recommended by the Inter-Departmental Committee (paragraph 45), is to draw a distinction between loss of nationality by the mere operation of the law of a foreign country and loss of nationality by the conscious and voluntary act of a British subject who desires to expatriate himself. The provisoes to section **6** are omitted to carry out the recommendation of the Committee that no special provision should be made for the repatriation of ex-British subjects. A British subject who has become an alien should be on the same footing as any other alien.

Clause 7.

Secretary of State may grant certificate of naturalization.

This clause reproduces the first paragraph of section 7 of the Naturalization Act, 1870, with this modification, namely, that residence or service in any part of His Majesty's dominions is substituted for residence or service in the United Kingdom as a condition of obtaining naturalization.

Clause 8.

Proceedings to be taken to obtain certificate.

This clause reproduces the second paragraph of section 7 of the Naturalization Act, 1870. It seems more convenient to break that section up into separate clauses, as distinct matters are dealt with.

Clause 9.

Effect of naturalization.

Subsection (1) is in substitution for the third paragraph of section 7 of the Naturalization Act, 1870. Under that section the effect of naturalization was confined to the United Kingdom. It was at least open to question whether a naturalized person was entitled to British protection abroad, and whether abroad or in the Colonies he had the responsibilities of a British subject. In accordance with the recommendation of the Committee, a naturalized person will now, as from the date of his naturalization, have the status of a natural-born subject of His Majesty. It will follow that his children, wherever born will be British subjects.

Subsection (2) is perhaps unnecessary, as the words in the Act of Settlement which it is proposed to repeal are probably impliedly repealed by the Act of 1870. If so, it would be sufficient to treat the repeal as consequential, and insert it in the schedule.

Clause 10.

Special certificate in case of doubt.

This clause reproduces the fourth paragraph of section 7 of the Naturalization Act, 1870. It may be worth considering whether the power of the Secretary of State should not be extended so as to enable him in cases of doubt to grant a certificate declaring that the applicant is not a British subject. In time of war it might be important to an individual to be able to prove that he was the subject of a neutral nation, and not a British subject. (*See* paragraph 42 of Report.)

Clause 11.

As to aliens naturalized before the Act.

This clause reproduces the last paragraph of section 7 of the Naturalization Act, 1870, with the substitution of the words "on such terms and conditions as he may think fit" for the words "on the same terms and conditions as if he had not been previously naturalized."

Clause 12.

Revocation of certificate of naturalization.

This clause is new, and gives effect to the recommendation of the Inter-Departmental Committee. The second subsection appears to be required to make the provision effective.

Clause 13.

Saving of allegiance prior to expatriation

This clause reproduces section 15 of the Naturalization Act, 1870.

Clause 14.

National status of married women.

This clause reproduces the first subsection of section 10 of the Naturalization Act, 1870, with a suggested drafting alteration to make it clear that the English Act is not attempting to define the status of a married woman for the purpose of foreign law. (*See* paragraph 49 of Report.)

Clause 15.

Status of widows.

This clause reproduces in simpler language the first part of subsection (2) of section 10 of the Naturalization Act, 1870. The concluding words are omitted in accordance with the policy of the Committee abolishing the distinction between the repatriation of ex-British subjects and the naturalization of other aliens.

Clause 16.

Status of divorced woman.

This clause is new, and is intended to carry out the recommendations of the Inter-Departmental Committee. It is probably declaratory.

Clause 17.

Status of children.

This clause is new, and is in substitution for subsections (3) to (5) of section 10 of the Naturalization Act, 1870. Under those subsections the nationality of children was complicated with provisions as to residence. The present clause is intended to carry out the recommendations of the Inter-Departmental Committee.

Difficulties sometimes arise as to the status of illegitimate children. Should a clause be added providing that the status of an illegitimate child should be determined by the place of his birth? This seems to be the present law.

Clause 18.

Regulations to be made by Secretary of State.

This clause reproduces section 1 of the Naturalization Act, 1870, as supplemented by section 1 of the Naturalization Oath Act, 1870 (33 & 34 Vict. c. 102), with the following modifications. In the first place, a general power to make rules is conferred on the Secretary of State, as he will now have to deal with recommendations from abroad. In the second place, express power is given to the Secretary of State to determine by regulations the persons before whom declarations of naturalization and alienage may be made. The Naturalization Act, 1870, prescribed in express terms the persons before whom declarations were to be made and oaths to be taken. The Naturalization Oath Act, 1870, authorized the Secretary of State to

prescribe the persons before whom the oath of allegiance might be taken. This, therefore, justifies giving him the same power with respect to declarations. Sub-section (5) of section 11 of the Act of 1870 authorized the Secretary of State to make regulations for the registration of marriages of persons married at any of Her Majesty's embassies or legations This provision was repealed by section 26 of the Foreign Marriages Act, 1892 (55 & 56 Vict. c. 23), and is, therefore, not reproduced here. For the regulations made under the Acts proposed to be repealed, *see* Statutory Rules and Orders Revised, Vol. I., p. 1.

Clause 19.

Effect of regulations.

This clause reproduces section 11 of the Naturalization Act, 1870. It would probably be better to omit the words in brackets, and to insert an express saving for the rules made in previous Acts until annulled.

Clause 20.

Regulations as to evidence of declarations.

This clause reproduces the first paragraph of section 12 of the Naturalization Act, 1870.

Clause 21.

Evidence of certificate of naturalization.

This clause reproduces the second paragraph of section 12 of the Naturalization Act, 1870, with the omission of the words relating to expatriated widows, which are not now required.

Clause 22.

Entries in registers.

This clause reproduces the third paragraph of section 12 of the Naturalization Act, 1870.

Clause 23.

Application of 31-32 Vict. c. 37, to regulations.

This clause reproduces the fifth paragraph of section 12 of the Naturalization Act, 1870. The clause seems unnecessary, as the Documentary Evidence Act, 1868, (31 & 32 Vict. c. 37), appears to apply automatically. *See* section 2 of that Act.

Clause 24.

Penalty on making false declaration.

This clause reproduces section 2 of the Naturalization Oath Act, 1870 (33 & 34 Vict. c. 102).

Clause 25.

Form of oath of allegiance.

This clause reproduces section 9 of the Naturalization Act, 1870, with the exception that the form given is inserted in the Schedule. Having regard to the provisions of the Oaths Act, 1888 (51 & 52 Vict. c. 46), which, under certain condition, allow an affirmation to be made instead of an oath; perhaps a form of declaration should be added applicable to the case of persons who are entitled to affirm instead of to take the oath.

Clause 26.

Naturalization of aliens in British dominions outside the United Kingdom.

This clause is new, and is intended to carry out the recommendation of the Inter-Departmental Committee. Subsection (4) raises a point which must be settled one way or the other. When in any British possession there is a Governor and also subordinate Governors, it should be made clear whether the expression "governor" relates only to the supreme governor or whether it includes also the subordinate governors. In India, for example, there are eleven local governments under the Governor-General in Council, and in some cases the officer who represents the Executive Government is of quite subordinate rank. Will the expression "Governor-General" include the High Commissioner in South Africa ?

Clause 27.

Power of colonies to legislate with respect to local naturalization.

This clause reproduces section 16 of the Naturalization Act, 1870.

Clause 28.

Definition of natural-born British subject.

This clause is new, but is declaratory except in so far as, in accordance with the recommendation of the Inter-Departmental Committee, it repeals the British Nationality Act, 1772. (13 Geo. 3. c. 21).

Subsection (1). In order to be a natural-born British subject a person must not only be born in His Majesty's dominions, but also in His Majesty's legiance. *Prima facie,* the terms are co-extensive, but there is a possible exception in the case of a person born in the embassy of a foreign state, or born of alien enemy parents in British territory, while under hostile occupation. But probably the best plan is to omit any reference to legiance, and to insert in the saving clause a general saving for the ex-territoriality of embassies, and for the status of children of alien enemies. Paragraph (*b*) represents the effect of 27 Edw. 3, stat. 1, 7 Anne, c. 5, and 4 Geo. 2. c. 21, read subject to modern statutes which recognise the expatriation of British subjects. *See* Dicey's *Conflict of Laws,* p. 177. Paragraph (*c*) appears to be declaratory. *See* Hall's *Foreign Jurisdiction of the Crown,* p. 18.

Subsection (2) is consequential.

Subsection (3) gets rid of the rule that the grandson of a natural-born British subject born abroad is to be deemed a natural-born British subject. This rule obviously gives rise to many cases of double nationality. Its abrogation would entail no hardship, as the grandson of a British subject who wishes to claim British nationality can always become naturalized.

Clause 29.

Subsection (1) reproduces section 13 of the Naturalization Act, 1870.

Subsections (2) and (3) are declaratory and are required for the purpose of the preceding clause. See *Com. Dig.* tit. Alien (A) and (B), and Calvin's case (1608), 2 State Trials, 559.

Clause 31.

This clause reproduces the definitions contained in section 17 of the Naturalization Act, 1870, so far as required. The definitions which are not reproduced are rendered unnecessary by the Interpretation Act, 1889, or by the alterations in the law proposed to be effected by the Bill.

M.D.C.

Nov. 26, 1902.

SCHEDULE OF REPEALS.

Act.	Subject-Matter.	How dealt with in Bill.
25 Edw. 3. stat. 1.	Statute for those who are born in parts beyond the seas.	Reproduced. cl, 28 (1).
12 & 13 Will. 3. c. 2.	The Act of Settlement	Words proposed to be repealed impliedly by cl. 9.
7 Anne, c. 5 ..	Naturalization of Foreign Protestants.	Reproduced, cl. 28 (1)
4 Geo. 2, c, 21.	British Nationality.....	Reproduced, cl. 28 (1)
13 Geo. 3, c. 21	" "	Expressly repealed, cl. 28 (3).
33 & 34 Vict. c. 14.	Naturalization.	
s. 1....	Short title.....	Unnecessary.
s. 2....	Capacity of alien as to property.	Reproduced, cl, 1.
s. 3....	Power of naturalized aliens to divest themselves of status.	First paragraph reproduces cl. 3 ; re mainder covered by cl. 18.
s. 4....	How British-born subject may cease to be such.	Reproduced, cl. 5.
s. 5....	Trial of alien.....	Repreduced, cl. 4.
s. 6....	Capacity of British subject to renounce allegiance.	Reproduced, cl. 6. Provisoes omitted, as re-admission to British nationality is to follow ordinary rule.
s. 7...	Certificates of naturalization.	Reproduced with amendments, cl, 7-11.
s. 8....	Certificate of re-admission to British nationality.	Not reproduced. *See* note to cl. 6.
s. 9....	Form of oath of allegiance.	Reproduced, cl. 25 and Sched. 1.
s 10....	Status of married women and infant children.	Reproduced with amendments, cl. 14-17.
s. 11....	Regulations as to registration.	Reproduced, cl. 18 and 19.
s. 12....	Regulations as to evidence.	Reproduced, cl. 20 to 24.
s. 13 ...	Saving as to denizens.... .	Reproduced, cl. 29 (1).
s. 14....	Saving as to British ships..	Reproduced, cl. 2.
s. 15....	Saving of allegiance prior to expatriation.	Reproduced, cl. 13.
s. 16....	Power of colonies to legislate with respect to local naturalization.	Reproduced, cl. 27.
s. 17....	Definitions.....	Reproduced so far as required, cl. .
s. 18....	Repeals.....	Spent.
Schedule....	Repealed enactments.....	"
33 & 34 Vict. c. 102.	Naturalization Oath.	
s. 1....	Regulations as to oaths of allegiance.	Reproduced, cl. 18.
s. 2....	Penalty on false declaration.	Reproduced, cl. 24.
s. 3....	Construction and short title.	Unnecessary.
35 & 36 Vict. c. 39.	Naturalization.	
s. 1....	Short title.....	Unnecessary.
s. 2....	Confirmation of renunciation of nationality under Convention with United States.	Probably unnecessary.
s. 3....	Saving as to property of married women before 1870.	Unnecessary ; covered by general savings.
Schedule....	Setting-out Convention....	Unnecessary.
58 & 59 Vict. c. 43.	Naturalization.	
s. 1....	Amendment of 33 & 34 Vict. c. 14, s. 10.	Superseded by cl. 17.
s. 2....	Short title.....	Unnecessary.

No. 2.

Foreign Office to Colonial Office.

(Received January 31, 1907.)

FOREIGN OFFICE, January 30, 1907.

SIR,—I am directed by Secretary Sir Edward Grey to acknowledge the receipt of your letter of the 5th instant,[1] enclosing copies of resolutions respecting naturalization proposed to be submitted to the forthcoming Colonial Conference by the Goverments of New Zealand and of the Cape Colony respectively.

With regard to Resolution IV. of the New Zealand Government, I am to observe that the Inter-Departmental Committee appointed by His Majesty's Secretary of State for the Home Department in 1899 to consider certain doubts and difficulties which have arisen in connection with the interpretation of the Naturalization Act, 1870, expressed themselves unanimously in favour of a uniform system of naturalization throughout the British Empire. So long, therefore, as the conditions precedent which are required by the New Zealand Government for Imperial Naturalization do not fall short of those required by the Mother Country, Sir Edward, as at present advised, does not see that any objection can be entertained to their making—should they see fit—their own laws with regard to any special Colonial naturalization, to be confined to the ambit of New Zealand, less stringent than the conditions of the Imperial Naturalization Law which will be recognized throughout the Empire.

Even assuming that they could theoretically make the conditions attaching to purely local naturalization in the Colony more stringent than those attaching to Imperial Naturalization, the practical advantage of such a proceeding is not apparent, as they would clearly under any scheme of Imperial Naturalization which they had accepted have to admit to the full privileges of British subjects all persons who had been imperially naturalized either in the United Kingdom or in other parts of the British Dominions.

I am, &c.,

F. A. CAMPBELL.

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[1] Not printed.

No. 3.

The Governor of the Cape of Good Hope to the Secretary of State.

(Received February 9, 1907.)

GOVERNMENT HOUSE, CAPE TOWN,

January 23, 1907.

MY LORD,—I have the honour to transmit to your Lordship, with reference to your Despatch of 14th December last,[1] a copy of a minute from Ministers, on the question of uniform laws to regulate the Naturalization of Aliens throughout the British Dominions.

I have, &c.,

WALTER HELY-HUTCHINSON.

Enclosure in No. 3.

(MINUTE.)

PRIME MINISTER'S OFFICE, CAPE TOWN,

(No. 1/52.) January 21, 1907.

Ministers have the honour to acknowledge the receipt of His Excellency the Governor's Minute of the 3rd January, 1907, forwarding copy of a Despatch from the Secretary of State for the Colonies, dated 14th December 1906, on the question of uniform laws to regulate the Naturalization of Aliens throughout the British Dominions.

In reply, Ministers would invite His Excellency's attention to the terms of their earlier Minute on this question (No. 1/206[2] of the 11th April 1904), which covered a report on the matter by the Honourable the Attorney-General, in which Ministers entirely concurred.

Without dealing in detail with the clauses of the draft Bill now submitted by Lord Elgin, Ministers would specially state that they have seen no reason to vary their approval of the opinions expressed in paragraph 13 of the Attorney-General's report. Many of the reservations there defined apply to the provisions of this draft Bill.

In replying to the Secretary of State's Despatch, Ministers beg that His Excellency will express their inability to concur, in particular, in Clauses 7, 9, and 26 of the draft Bill.

E. H. WALTON.

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[1] No. 1.

[2] Enclosures to Governor's Despatch of 16th April, 1904. Enclosure 1 in No. 1.

No. 4.

The Governor of Natal to the Secretary of State.

(Received March 30, 1907.)

GOVERNMENT HOUSE, PIETERMARITZBURG, NATAL,
March 6, 1907.

MY LORD,—WITH reference to your Despatch of the 14th December,[1] I have the honour to inform you that my Ministers have fully considered the draft Imperial Bill for the consolidation and amendment of enactments relating to aliens and naturalization enclosed therein.

2. In view, however, of the fact that an Act was passed in this Colony as recently as 1905 with the object of making better provision in regard to the naturalization of aliens, which Act was practically based on the concurrence of the South African Colonies, Ministers are not prepared at the present time to consider the question of any revision of the existing legislation as affecting Natal.

I have, &c.,
HENRY McCALLUM.

No. 5.

The High Commissioner for South Africa to the Secretary of State.

(Received 7.40 p.m., April 15, 1907.)

TELEGRAM.

15th April. No. 48. Referring to my telegram of 18th February, No. 20, and your reply, following received from Lieutenant Governor, Orange River Colony:—

This Government agrees that the subject of naturalization of aliens should be discussed at forthcoming Conference.

With reference to recommendations of Cape Ministers comprised in paragraph 13 of Attorney-General's report, the Government does not agree that distinctions of colour should be embodied in the Imperial Act, and consequently cannot endorse sub-clauses (B), (C), (D) and (G), but is in accord with (*a*) and first part of (*k*). It does not consider (*e*) and (F) sufficiently important to be necessary, holding that minute distinctions should be as far as possible avoided.

Other points will be dealt with in despatch which follows. I am not forwarding views of Transvaal Government, as Prime Minister will be present at the Conference.—SELBORNE.

[1] No. 1.

SIXTH DAY.

HELD AT THE COLONIAL OFFICE, DOWNING STREET,

THURSDAY, 25TH APRIL, 1907.

PRESENT:

The Right Honourable THE EARL OF ELGIN, K.G., Secretary of State for the Colonies (President).

The Right Honourable Sir WILFRID LAURIER, G.C.M.G., Prime Minister of Canada.

The Honourable Sir. F. W. BORDEN, K.C.M.G., Minister of Militia and Defence (Canada).

The Honourable L. P. BRODEUR, Minister of Marine and Fisheries (Canada).

The Honourable ALFRED DEAKIN, Prime Minister of the Commonwealth of Australia.

The Honourable Sir JOSEPH WARD, K.C.M.G., Prime Minister of New Zealand.

The Honourable L. S. JAMESON, C.B., Prime Minister of Cape Colony.

The Honourable Dr. SMARTT, Commissioner of Public Works (Cape Colony).

The Right Honourable Sir R. BOND, K.C.M.G., Prime Minister of Newfoundland.

The Honourable F. R. MOOR, Prime Minister of Natal.

General The Honourable LOUIS BOTHA, Prime Minister of the Transvaal.

Mr. WINSTON S. CHURCHILL, M.P., Parliamentary Under-Secretary of State for the Colonies.

Sir FRANCIS HOPWOOD, K.C.B., K.C.M.G., Permanent Under-Secretary of State for the Colonies.

Sir J. L. MACKAY, G.C.M.G., K.C.I.E., on behalf of the Indian Office.

Mr. H. W. JUST, C.B., C.M.G.,
Mr. G. W. JOHNSON, C.M.G.,
Joint Secretaries.

Mr. W. A. ROBINSON,
Assistant Secretary.

ALSO PRESENT:

The Right Honourable HERBERT GLADSTONE, M.P., Home Secretary.

The Right Honourable JOHN BURNS, M.P., President of the Local Government Board.

Sir D. M. CHAMBERS, K.C.B., Permanent Under-Secretary of State, Home Office.

Mr. C. P. LUCAS, C.B., Assistant Under-Secretary of State for the Colonies.

Mr. H. BERTRAM COX, C.B., Assistant Under-Secretary of State for the Colonies.

Mr. J. PEDDER, Home Office.

Mr. H. LAMBERT, of the Colonial Office and Emigrants' Information Office.

NATURALIZATION.

CHAIRMAN: With regard to the subject of naturalization to which we now pass I may remind you that we sent out in December last certain papers dealing with the subject, and the Home Secretary is here to-day to make a further statement to you and to make a suggestion as to the best manner in which the Conference might, perhaps, deal with this subject in its present form.

Mr. HERBERT GLADSTONE: Lord Elgin, and gentlemen, we are, I take it, in general agreement that it is most desirable to attain uniformity in this matter by Imperial Legislation as far as possible. We recognize that this is a question of the greatest importance to the Colonies. Experience and scientific observation have taught us much on the subject, but here in this country we have a dense established population, and the difficulties which will occur in connection with naturalization are not likely to be of a critical nature. To the Colonies with their vast unfilled territories, we recognize that questions of immigration and naturalization admittedly must be of the greatest moment. In what I have to say I propose to deal with the main consideration and to avoid for the present the subsidiary points, and all the more so because when you disturb the seemingly quiet surface you very soon find that there are a series of rocks and shoals in law and other directions in connection with this question. The draft Bill circulated as a basis for this discussion I need not say we have no desire to rush in any sense at all. It has been prepared for this discussion, and I have no doubt the discussion will be full in every way. Our wish in seeking uniformity is to cover by the Act which we have in prospect as completely as possible all the ground which is common to us all, both in the United Kingdom and in the Colonies; and the Bill itself re-enacts, consolidates, and, to a certain extent, amends the existing law. In its construction we proceeded from the circumference to the centre rather than from the centre to the circumference. First and foremost, I would like to draw the attention of the Con-

ference to the fact that the Bill proposes to remove two principal anomalies which have for a long time caused irritation and inconvenience, both in the Colonies and in the Mother Country. First of all, as the law now stands, a certificate of naturalization can only be granted in the United Kingdom—excepting the case of a person in the service of the Crown—to a person who has resided, and intended to reside, in the United Kingdom. If he intends to go to the Colonies, however closely associated he may be with British interests and British life generally, he cannot be naturalized. Therefore it comes to this, that a wish on the part of this person to go to the Colonies in itself becomes a disqualification. Conversely, if a man in the Colonies is identified with Colonial interests, even if he is naturalized in that Colony, he cannot qualify if he comes to the Mother Country until he has resided here for five years. So that his Colonial connection is again a disqualification for a period of five years during which he cannot become a British subject. Our view is that these anomalies are totally opposed to the principle of unity and solidarity within the Empire with regard to this matter. We propose to deal with this in clause 7 of the Bill, which provides that: "An alien who within such "limited time before making the application hereinafter men- "tioned as has been under any Act hereby repealed or may "be allowed by the Secretary of State, either by general order "or on any special occasion, has resided in His Majesty's "Dominions for not less than five years, or has been in the service "of the Crown for not less than five years, and he intends, "when naturalized, either to reside in His Majesty's Domin- "ions, or to serve under the Crown, may apply to the Secretary "of State for a certificate of naturalization." It is in its general terms taken from the Act of 1870, but substituting "His Majesty's Dominions" for "the United Kingdom." In that way we propose to entirely remove this particular anomaly. The second leading anomaly to which I have alluded lies in the fact that a certificate of naturalization granted in a Colony takes effect only in that Colony. We propose to remove that by clause 26 of the Bill, the effect of which in brief is this, that where conditions of naturalization in a Colony are substantially the same as those required in the United Kingdom, an Order of His Majesty in Council may enable that certificate granted in that Colony to have effect throughout the Empire. That provision produces two main results; a certificate granted in the Colonies in that prescribed way becomes valid in the United Kingdom, and in the second place it becomes valid in other Colonies. By the first result the second great anomaly to which I have referred is removed.

Mr. Deakin: "Colonies" covers more than "self-governing colonies."

Mr. Herbert Gladstone: That is quite true. I am talking in general terms now. That point certainly requires

elucidation and discussion; and other similar points, for instance, as an illustration the meaning of the word "Governor" in the Bill. Points of that sort will require further discussion. I am only dealing now with the general drift of our proposals. I think then that so far as the removal of these anomalies is concerned, we do provide a certain basis of principle for an Imperial Naturalization Law. The second result of clause 26, to which I have alluded, namely, that a certificate given in the Colonies is valid in other Colonies, has been the subject of considerable criticism in the Memorandum which we have received from the Cape drawn up by the Attorney-General of the Cape Government. His point is that the Imperial law is too lax to be accepted as a test of adequate conditions of naturalization in the Colony; and he develops the criticism in two directions. He points out that the discretion of the Secretary of State being absolute, there was nothing in the law to prevent in the Mother Country a certificate of naturalization being given to undesirables who might even be criminals, and in the second place to persons of non-European descent. In passing, I might perhaps observe one remark in the Memorandum. The Cape Attorney-General noted that at the time the Memorandum was written there was no Act dealing with the immigration of aliens in this country. Since then, as is well known, an Act has been passed, and certainly with regard to undesirables that Act has had a considerable operative force, and it does arm the Government with large powers to deal with aliens who are found guilty of crime in this country; and under that Act we have got rid of a large number of extremely dangerous and unsatisfactory persons. So we are so much, at any rate, to the good in that matter. Perhaps I may here deal with the point that the law of this country is lax, or rather that the practice under the law, the administration of it, is lax, because that is what it comes to. I may just briefly describe to the Conference what our action is in regard to this matter in my Department. Every applicant for a certificate has to give four references as to his character, and he has to give a fifth as to his residence. In every single case the most minute inquiries are made as to his character, his position, his antecedents, and his intentions. Of course, the inquiries are made in various directions, and whenever there is any necessity we make the inquiries through the police, who are the most convenient agents at our disposal in the matter. We also lay down certain tests which we require the applicants to pass; for example, we have the general test that the man must be able to read and write. We hold that he has not a real claim to the advantages of citizenship unless he is able to read and write English. Although there may be a solitary occasion or two in which some exception is made to that, that is the general rule on which we act. Then there is also a fee to be paid. if the alien is generally satisfactory, of 5*l.*, before he can get his certificate. If there is any suspicion of criminality on

the part of the man, that suspicion has to be dissipated as a condition precedent to his obtaining his certificate; and, as far as we know, no criminal has been naturalized in this country. Of course, we maintain whatever may be said about the provisions of the law, that in effect our administration of it is by no means lax, and would fulfil with regard to undesirableness and crime the requirements which are suggested on the part of the Cape Government. But it would be quite possible to consider whether certain classes of criminal undesirables might not be named in the Bill as being disqualified for naturalization. That is a matter which we should be very glad to consider, and, in fact, to put it briefly, we might see how far we could express in law what, in fact, has been our practice in its administration in this country. With regard to the second point of the Cape Attorney-General, namely, his reference to persons of non-European descent, in this country we have admitted extremely few persons of non-European descent. It is a point, so far as we are concerned here, which is not at all serious; and I would like to remind the Conference that Natal, which has by law excluded non-Europeans from naturalization, has accepted the United Kingdom's certificates as valid. A point has been raised in the Cape Attorney-General's Memorandum with regard to the conditions prevailing in Crown Colonies in regard to this matter, and he says it is a vital consideration that Hong Kong, a Crown Colony, has no naturalization law, and that the Straits Settlements require no stated period of residence, so there is nothing to prevent a Chinaman landing there and at once getting his letters of naturalization, and if the recommendation of the Committee is adopted, that it shall suffice to declare intention to reside within the Dominion, that Chinaman can at once proceed to South Africa, and can only be shut out by Act of Parliament. Of course, that is a point that requires very serious consideration, but I would suggest with regard to it that the Order in Council under these circumstances would not be made, because the conditions locally would not be so satisfactory as the conditions which prevail in this country, which would be the test. the test really would be the conditions which prevail in this country, and not the conditions which might prevail in Hong Kong or the Straits Settlements or any other Crown Colony. I would suggest to the Conference on this point, which is as I quite understand of great importance in connection with this Draft Bill, that before an Order in Council is issued there would be ample opportunity to consult the Colonial Governments concerned; and through the machinery, which I am glad to say it is proposed to set up by the establishment of a Secretariat, we should be able to ascertain the views of the Colonial Governments concerned, as to whether the conditions of the certificate were sufficiently satisfactory.

I do not like to go into further details at this stage. We shall be glad to consider any suggestion. A number of de-

tailed suggestions were made in the Cape Attorney-General's Memorandum, most of which have been dealt with and embodied in the Draft Bill; so that it is proposed to assimilate those suggestions which are now the law in most Colonies with our own law. We recognise the force and justice of the claim of the Colonial Governments to deal with special difficulties which affect them in varying ways, and with which the Home Country is not directly concerned, or with which it is not desirable or possible for us to deal ourselves. I would venture to suggest that outstanding points, points for the most part of detail, but still of very important detail, should be left to be dealt with by a committee. Our desire is to make the Imperial Law as comprehensive and acceptable to the Empire as possible, and we seek, in short, willing agreement on a basis which will not interfere with the local necessities and the legitimate desires of all the individual Colonial Governments which are concerned in this question. I therefore would venture, Lord Elgin, to suggest that this Bill might be referred to a Committee, so that its details may be thoroughly considered by representative men, and I would propose to move a resolution which runs thus: "That, with a view to attain uniformity, "so far as practicable, an inquiry should be held to consider "further the question of naturalization, and in particular to "consider how far and under what conditions naturalization "in one part of His Majesty's Dominions should be effective "in other parts of those Dominions, a subsidiary Conference "to be held if necessary under the terms of the resolution "adopted by this Conference on the 20th April last."

Sir Wilfrid Laurier: That is, perhaps, as far as this Conference would propose to go. It is a very complicated question, and I think it advisable to have a discussion upon it.

Chairman: You wish to discuss it further?

Sir Wilfrid Laurier: I think so. It is most important and most complicated.

Sir Joseph Ward: It certainly ought to be discussed.

Mr. Herbert Gladstone: It is very complicated.

Chairman: We submitted this resolution strictly in the terms of the decision of the Conference the other day with regard to our future organisation, so that it might be carried out on those lines, namely, that we should be responsible for seeing that an inquiry was made at a subsidiary Conference held as soon as the inquiry might be ready. We put it before you just now in case on those terms the Conference did not wish to discuss it further at this meeting, it being a very technical matter, but of course if the Conference does desire it, we must try and arrange another day.

Dr. JAMESON: Could it be adjourned to one day next week, when we might have a copy of what Mr. Gladstone has told us ?

CHAIRMAN: We cannot discuss it next week.

Sir JOSEPH WARD: I think we ought to have a general discussion upon it.

Dr. JAMESON: Yes, that general discussion might be at a later period, and then we shall have before us a copy of Mr. Gladstone's address.

Sir JOSEPH WARD: If this matter went to a Committee before we had an opportunity of discussing it, there are some points of material importance certainly, to New Zealand, which I should have no opportunity of dealing with. I wish to deal with them, though I can do so briefly, because it is a very complicated and difficult matter and the proposals outlined by Mr. Gladstone in some respects are of a very far reaching character so far as my country is concerned.

Mr. HERBERT GLADSTONE: May I say that I did not formally move the resolution with a view to avoid a general discussion before we got to it, but I thought that as the hour was now late it might be desirable to put my general suggestion before the Conference so that you should be in possession at any rate of our views in the matter, and then the Conference could take what course it thought desirable.

CHAIRMAN: Then the Conference adjourns on this matter and the actual day to be fixed for that discussion to be left open.

Adjourned to to-morrow at 3.30.

FOURTEENTH DAY.

HELD AT THE COLONIAL OFFICE, DOWNING STREET, THURSDAY, 9TH MAY, 1907.

PRESENT:

The Right Honourable THE EARL OF ELGIN, K.G., Secretary of State for the Colonies (President).

The Right Honourable Sir WILFRID LAURIER, G.C.M.G., Prime Minister of Canada.

The Honourable Sir F. W. BORDEN, K.C.M.G., Minister of Militia and Defence (Canada).

The Honourable L. P. BRODEUR, Minister of Marine and Fisheries (Canada).

The Honourable ALFRED DEAKIN, Prime Minister of the Commonwealth of Australia.

The Honourable Sir W. LYNE, K.C.M.G., Minister of Trade and Customs (Australia).

The Honourable Sir JOSEPH WARD, K.C.M.G., Prime Minister of New Zealand.

The Honourable L. S. JAMESON, C.B., Prime Minister of Cape Colony.

The Honourable Dr. SMARTT, Commissioner of Public Works (Cape Colony).

The Right Honourable Sir ROBERT BOND, K.C.M.G., Prime Minister of Newfoundland.

The Honourable F. R. MOOR, Prime Minister of Natal.

General The Honourable LOUIS BOTHA, Prime Minister of the Transvaal.

The Right Honourable WINSTON S. CHURCHILL, M.P., Parliamentary Under Secretary of State for the Colonies.

Sir FRANCIS HOPWOOD, K.C.B., K.C.M.G., Permanent Under Secretary of State for the Colonies.

Sir J. L. MACKAY, G.C.M.G., K.C.I.E., on behalf of the India Office.

Mr. H. W. JUST, *C.B.*, C.M.G.,
Mr. G. W. JOHNSON, C.M.G.,
Joint Secretaries.

Mr. W. A. ROBINSON,
Assistant Secretary.

ALSO PRESENT:

The Right Honourable D. LLOYD GEORGE, M.P., President of the Board of Trade.

Mr. H. LLEWELLYN SMITH, C.B., Permanent Secretary to the Board of Trade.

Mr. A. WILSON FOX, C.B., Comptroller-General of the Commercial, Statistical, and Labour Department of the Board of Trade.

Mr. G. J. STANLEY, C.M.G., of the Board of Trade.

The Right Honourable SYDNEY BUXTON, MP.. Postmaster-General.

Mr. H. BABINGTON SMITH, C.B., C.S.I., Permanent Secretary to the Post Office.

The Right Honourable HERBERT GLADSTONE, M.P., Secretary of State for the Home Department.

Sir MACKENZIE D. CHALMERS, K.C.B., C.S.I., Permanent Secretary to the Home Office.

Mr. J. PEDDER, of the Home Office.

The Right Honourable H. H. ASQUITH, M.P., Chancellor of the Exchequer.

Mr. W. BLAIN, C.B., of the Treasury.

NATURALIZATION.

CHAIRMAN: We next have the question of naturalization, on which we have already heard the Home Secretary. Sir Wilfrid Laurier asked that this should be adjourned to express your views upon the subject.

Mr. GLADSTONE: I have prepared a draft resolution.

Sir WILFRID LAURIER: I think there is no objection to that. As far as I am concerned, I quite agree to that.

CHAIRMAN: Perhaps I had better remind the Conference that the draft resolution submitted was: "That with a view to "attain uniformity, so far as practicable, an inquiry should be "held to consider further the question of naturalization, and "in particular to consider how far, and under what conditions, "naturalization in one part of His Majesty's Dominions should "be effective in other parts of those Dominions, a subsidiary "Conference to be held, if necessary, under the terms of the "resolution adopted by this Conference on the 20th of April "last."

Gen. BOTHA: I have a memorandum on naturalization which I should like to read and hand in, though I quite agree with that resolution.

Dr. SMARTT: If that is read, I think that will allow us to come to some conclusion now.

CHAIRMAN: Would you hand it in?

Dr. SMARTT: It affects the discussion considerably. I think.

Sir WILFRID LAURIER: My colleage, Mr. Brodeur, has something to say on this subject. It will perhaps fit in at this moment.

Mr. BRODEUR: Lord Elgin and gentlemen. I have only one or two observations to make with regard to this resolution moved on the question of naturalization: I may say we have passed in Canada this year a Bill on the question of naturalization to this effect. I may perhaps read the most important part of the Bill, which provides: "Any person resident in Canada, "or in the service of the Government of Canada, or of any "province of Canada, who has obtained a certificate or letters "of naturalization in the United Kingdom, or any part thereof, "or in any British Colony or Possession, which certificate or "letters remain or remains in full force and effect, and who "desires to be naturalized in Canada may, if he intends when "naturalized either reside in Canada or to serve under the "Government of Canada or the Government of any such pro-"vince, apply for a certificate of naturalization in manner "hereinafter prescribed, without having complied with the con-"dition as to residence required under section 13 of the "Naturalization Act, chapter 77 of the revised statutes, 1906." Our Act really provides that a person who has resided in Canada for three years may obtain letters of naturalization, giving certificates as to his character, and as to his residence. He has to apply to the Courts, and the Courts decide whether under the statute he is entitled to be naturalized. We passed in the session which has just closed the clause which I have just read, by which in the future a man to be naturalized who has got already a letter of naturalization from any British Colonies will be entitled to come before the Courts and to have his certificate of naturalization in Canada, so to a general extent we are accepting the certificate of naturalization which has been given by the other British Colonies.

I do not know whether it is advisable or not that we should discuss the Bill which is proposed to be introduced into the House of Commons here, but I think that section 7 is going a little further than I, for my part, would be willing it should go, because there it is declared that when a certificate of naturalization has been given here it is to be accepted by the Colonies themselves. I think it would be just as well to leave this question entirely in the hands of the Colonies. It will be advisable perhaps to have a general law, as we are having in Canada, but at the same time giving to the Colonies the right to legislate and do what they like. I am afraid this clause will have the effect of preventing the Colonies from legislating on the question. That is the only objection I see to the Bill which is going to be introduced.

Mr. DEAKIN: Generally the Bill appears to us to be a good one, and would certainly be of assistance in clearing up ambiguities which at present exist in the law. One point I may mention without entering into detail is that if clause 12 were assimilated to clause 8, so that it might be acted upon without assigning any reason, that would be of advantage.

The naturalization question has few difficulties in Australia, except in regard to the admission of coloured races, and particularly coloured aliens. It is due to that apprehension that we have been and shall continue to be vigilant in guarding a possible use of this Bill. As, however, it does not appear in any way to impair the scope of our Immigration Acts, under which the education test is applied at discretion, this particular measure is not open to the objection that it weakens the force of those statutes. Under these circumstances we look forward with some expectancy to the passing of the Bill as likely to be of value to ourselves as well as to the other Colonies.

General BOTHA: I will ask for my memorandum to be read now.

The memorandum was read as follows—

"(1.) It is desired that an alien naturalized in any portion of His Majesty's Dominions should have to all intents and purposes, as from the date of his naturalization, the status of a natural born British subject not only within the ambit of the law under which letters of naturalization are issued to him, but everywhere, except when the naturalized person is actually within the country of which, at the time of naturalization he was, and of which he still remains a subject.

"(2.) In order to carry out this object a Bill has been drafted under the instructions of the Secretary of State for the Colonies consolidating and amending the enactments of the Imperial Parliament relating to aliens and naturalization. A copy of this Bill is included among the papers on the subject of naturalization sent to each of the Colonial Premiers.

"(3.) The procedure laid down in section 26 of that Bill for conferring on an alien naturalized in a British possession outside the United Kingdom the status of a British subject everywhere, is not satisfactory.

"(4.) It has been suggested that the Imperial Act relating to the naturalization of aliens should be so amended as to apply to every portion of His Majesty's Dominions. The objection to this suggestion is that it is not desirable that legislation should be imposed on a self-governing Colony except by the Parliament of such Colony.

"(5.) The difficulty can be overcome by providing in the Imperial Act that so much of it as relates to the naturalization of aliens, their status when naturalized, as also the status of their wives and children may be put in force *mutatis mutandis* in any portion of His Majesty's Dominions, by a proclamation

of the Governor thereof. In a self-governing Colony such proclamation would only be issued by the Governor on the advice of the responsible Ministers of such Colony. The clauses of the draft Bill which would be put in force under the proclamation would be sections 7 to 17 inclusive, section 18 (with the exception of subsections (2), (3), and (8) and sections 20, 21, 24 and 25).

"(6.) The Imperial Act must provide that the proclamation aforementioned shall name the authority to whom application shall be made for certificates of naturalization, and by whom they shall be issued, and that the powers and duties conferred under the Act on the Secretary of State shall be exercised by the said authority. It should also provide that a certificate of naturalization issued by such authority shall have effect, to all intents and purposes, as if it were a certificate granted by the Secretary of State, under the Imperial Act.

"(7.) The following provisions in the draft Bill should, however, be amended before it can be accepted by some of the self-governing Colonies:—

"(A.) The Bill, as drafted, applies to aliens of non-European descent equally with those of European birth or descent. In some of the self-governing Colonies (Natal for example) local naturalization is granted only to Europeans, and it is unlikely, therefore, that any such Colony will agree to recognize as a British subject any coloured person coming to reside therein, who has been naturalized in some other portion of His Majesty's Dominions where no colour distinction is made. On the other hand, the Imperial Parliament may strongly object to making any such distinction in any naturalization law submitted to it, especially seeing that no such distinction is made in the present Imperial Act of 1870, under which it may be urged that a person naturalized within the United Kingdom is a British subject in whatever part of His Majesty's Dominions he may take up his residence. This difficulty may be overcome by providing that a certificate of naturalization granted in any Colony in which the Imperial Act has been put in force in manner prescribed in the last preceding subsection shall have effect beyond the borders of such Colony only when granted to a person of European birth or descent. By such a provision one Colony would not be bound to admit as British subjects persons of non-European descent naturalized in some other Colony under the provisions of the Imperial Act put in force in such other Colony as prescribed in the last preceding subsection. Notwithstanding such a provision, a coloured person naturalized in the United Kingdom could be a British subject in whatever part of His Majesty's Dominions he may take up his residence. It is difficult to see how this can be avoided in view of the fact that such is the position under the present Imperial Act,

which has been operative since 1870. In section 9 of the Draft Bill, the words "except as otherwise provided by law" shall be inserted after the word "shall" in the first line of that clause 30, so as to make it quite clear that a coloured person, naturalized in England, although a British subject everywhere, would, on taking up his residence in any Colony, be subject to the same political and other disabilities as are imposed by the law of that Colony on coloured persons, even thought they may be British subjects.

"(B.) Section 7 of the Draft Bill provides as a condition precedent to the issue of certificates of naturalization that the applicant for them should have, within a certain limited time, resided in His Majesty's Dominions for a period of not less than five years. It would be better to insist that for one of those years, namely, for the twelve months immediately preceding his application, he should have resided within that portion of His Majesty's Dominions in which his application is made. This would give the authority in whom is vested the discretion of issuing certificates of naturalization, a better opportunity of exercising his discretion so as to avoid, as far as possible, undesirable aliens from being naturalized.

"(C.) Under the Draft Bill an absolute discretion to issue certificates of naturalization is given to the Secretary of State. It ought, however, to be made imperative that a certificate shall not be issued to a person who has been convicted of an offence for which a sentence of imprisonment has been passed without the option of a fine until he has received a free pardon, or until a period of five years has elapsed between the date of such conviction and the application for a certificate of naturalization. Provision is made in the Draft Bill for cancelling certificates of naturalization obtained by false representation or fraud. If an applicant, therefore, who has been convicted of any such offence as aforesaid, conceals such conviction in making his application for a certificate of naturalization, he runs the risk of having that certificate cancelled.

"(D.) The Draft Bill further provides that an applicant who applies for Letters of Naturalization must intend when naturalized to reside in His Majesty's Dominions. It would be better, if such intention is to be made of any value at all, to limit future residence to the portion of His Majesty's Dominions in which the application is made. There may be evidence available to show that a person applying for a certificate of naturalization in New Zealand, say, does not intend to reside there; it would be hopeless to expect to get evidence that he does not intend to reside in some portion or other of His Majesty's Dominions.

"(E.) Clause 28 (A) of the Draft Bill provides that any person born in His Majesty's Dominions shall be deemed to be a natural born British subject. It is suggested that an exception should be made in the case of a person born in His Majesty's Dominions, but whose father was at the date of his birth an alien indentured labourer of non-European descent."

Mr. GLADSTONE: Lord Elgin and gentlemen, may I observe that the memorandum which has just been read raises a number of points, but I think a good many of them are dealt with in the statement which I made on the last occasion when this subject was under discussion. (For example, with regard to criminals, I pointed out the practice which we adopted in this country with regard to the granting of certificates, and said that it would be quite easy to put into a Bill what, in effect, is our practice at the present time. On that point I think it would entirely meet the case put forward under (C) I am not going through all the many points raised but there is some misapprehension in parts of the memorandum as to the intention and meaning of the Bill. For instance, under (D) in the memorandum which has just been read, there is this: "if such intention is to be of any value at all to limit "future residence to the portion of His Majesty's Dominions "in which the application is made." But that would defeat the very object of the proposal, because if a person in England, meaning to go to one of the Colonies, and perhaps not able to go for a month or a year, desires to have a certificate of naturalization, of course he cannot under the present law get that certificate of naturalization because he does not intend to reside in the United Kingdom. That is the condition of the law under which he would get his certificate. We desire to remove that restriction. We think the fact that a man who is in England now, not having a certificate, who desires to go to a Colony ought not to be debarred from getting a certificate by the mere reason that he desires to go to a Colony rather than stay for the necessary five years in this country. Those are details which, I suggest, could best be dealt with in the subsequent inquiry which is proposed in the resolution read by Lord Elgin.

In paragraph (4), which has been read, it is stated: "It has "been suggested that the Imperial Act relating to the natural-"ization of aliens should be so amended as to apply to every "portion of His Majesty's Dominions. The objection to this "suggestion is that it is not desirable that legislation should "be imposed on a self-governing Colony except by the Parlia-"ment of such Colony." Our object is to have a general law for the whole Empire as far as is possible. May I remind the Conference that a phrase I used in making my statement runs thus, showing at any rate what is our wish and intention: "Our chief desire is to make the Imperial law as comprehen-

"sive and acceptable to the Empire as possible, and we seek "in short, willing and legitimate desires to all the individual "Colonial Governments which are concerned in this question." In another place I said we desired the Bill to include as much common ground as possible to meet the general convenience of all parts of the Empire. This suggestion now made is rather wasting time in this Conference. But I suggest that though this is a very important matter, it is in the nature of a detail, though a very important detail, on which, perhaps the whole Bill would depend, and I think it could be met by discussion so that the view which I expressed and have quoted could be carried into effect—that the local interests of a particular Colony could be considered and regarded in any Bill which was passed.

Sir WILLIAM LYNE: Was not there a suggestion that only certain parts should be applied to the Colony by proclamation?

Mr. GLADSTONE: By Order in Council.

Sir WILLIAM LYNE: That would do away with any trouble with regard to a general Bill

Mr. GLADSTONE: Of course, conditions could be attached to an Order in Council so far as to meet General Botha's memorandum.

General BOTHA: If you will read No. 5 you will find No. 5 provides how to overcome the difficulty in No. 4.

Sir JOSEPH WARD: May I be allowed to put the position of New Zealand so that Mr. Gladstone may have the situation in view all round. As far as New Zealand is concerned I want to make it clear, without offence to any other race in any respect whatever, that New Zealand is a white man's country, and intends to remain a white man's country; we intend to keep our country for white men by every effort in our power. If there is anything in this proposal and I am just afraid there is, that would bring about a position that in years to come some members of an alien coloured race who had resided in England for a period of upwards of five years, and had obtained a naturalization certificate would be entitled, if this Bill became of general application to the Colonies, to letters of naturalization of the Empire, which would entitle them to come into our Colony as naturalized subjects. Speaking for New Zealand we would strongly oppose it on national grounds peculiar to our local circumstances.

Mr. GLADSTONE: Could not you meet it with the immigration law?

Sir JOSEPH WARD: The immigration law there would come into conflict with the proposals under this Bill. Under our immigration law in New Zealand, which I think our country would not relax, we insist upon certain examinations, and will not allow aliens who do not comply with the reasonable

conditions that we require to come into our country. I want to be perfectly sure, speaking from a New Zealand standpoint, that in any legislation that is put upon the Statute Book in the hope of having law common to all as Mr. Gladstone said, we maintain the right of New Zealand to exercise to the fullest possible extent the control of an alien race that we might consider an undesirable acquisition to our community. I am not saying it offensively in any sense whatever to any other race, but the feeling that we should help our own race permeates the whole country. The school children in our schools are taught to regard New Zealand as a white man's country. We look upon it as a glorious portion of the British possessions, and we want to keep it so. We are advancing in many ways and are well circumstanced with a fine population throughout, and we want to avoid the mixing up and the contamination of the races both now and in the years to come by preserving it for white men to-day and not allowing any law, whether for the purpose of naturalization or for any other purpose to interfere with it. That is the fundamental and essential condition which I wish to see established in the interest of Great Britain just as well as New Zealand.

With that reservation, as far as we are concerned, I should only be too glad to assist in the very laudable object Mr. Gladstone has in view of having uniformity of treatment, but I do hope in giving effect to that uniformity of treatment that in the main overriding law you will make provision that the right of a self-governing Colony cannot be overridden by saying we have assented to some principle which might be found in operation injurious to our people.

Mr. GLADSTONE: It would be our intention to meet the views you have expressed. I am not prepared at the present moment to say in what terms in the Bill it should be done. I think that is a matter for discussion. It will be of great value to me to have the views of the representatives of the different Colonies, so that we can consider subsequently having those views in black and white before us how best they can be met in the provisions in the Bill. The Bill itself, as explained last time, is only put forward as a basis for discussion. It is a draft Bill. There is no idea of at once introducing it into the House of Commons and discussing it there with all these particular matters put forward to-day by General Botha and others unsifted and practically unsettled. There is no idea of that sort. I think I can give an assurance that the views put forward generally to-day will be carefully considered before anything substantive and final is proposed formally. Probably the best plan, if this resolution which has been moved is accepted by the Conference which, I understand, could be held under the terms of the resolution adopted on the 20th April.

It is a very difficult matter, from the point of view of the

law alone, and I should not care to attempt to offer suggestions or solutions of the various points raised straight away.

Dr. SMARTT: It is a very important question to get settled, if you can do so, somewhere on the lines suggested by you, because we have the greatest difficulty. For instance, in South Africa, I take it that an alien naturalized in one Colony, perhaps holding the very highest office, who, after years and years goes to another Colony, finds that he has no privilege of British citizensip whatsoever. That is a very undesirable state of affairs. With regard to the people naturalized in Great Britain: they have an advantage, I take it, under your Act of 1870. If they go to any Colony they have all the rights and privileges of British citizenship. I am glad to understand, if I interpret your remarks aright, that you are prepared to consider what has been said by Sir Joseph Ward in that direction. There should be no difficulty at arriving at a common term, or common period of naturalization which would be acceptable to all portions of the British Empire. It is a fact that in Great Britain, you may naturalize an alien of non-European extraction, and if there would be any possibility of your modifying that clause in your Bill so as not to allow him, *ipso facto,* to claim the rights of British citizenship in British possessions, it would meet a great many of us to a very large extent. Then there would be a possibility of the Home Government introducing a Bill, fixing, say, upon a certain period of five years, and other terms to be agreed upon, and practically without special legislation in the other Colonies or Dominions, it would only be necessary to pass a resolution or a clause adopting the Home Act, which really would allow anybody naturalized in any portion of the British Empire, who was of European extraction, and had resided the specified period of time, *ipso facto* to have all the privileges of British citizenship in any part of the British Empire to which he went.

I might give you a very strong case indeed. We had in the Cape Colony a very notable alien in the person of the late Colonel Schermbrucker. He was naturalized as a British subject, and became a Minister of the Crown. To everybody it must appear as most undesirable that if, during his lifetime, he had gone, say, to the Colony of New Zealand, or to the Colony of Australia, he would have had to be re-naturalized, and could not have claimed the privilege of British citizenship. I believe such is the law as it exists at the present time. I should like to have Mr. Deakin's view upon the question of an alien, naturalized in Cape Colony (no matter how high a post he held in that Colony) if he went to Australia, and, being of alien birth, his British citizenship in the Colony of the Cape of Good Hope would not give him the privilege of British citizenship in the Commonwealth of Australia.

Mr. DEAKIN: I think that is so.

Mr. GLADSTONE: Yes, I think it is so.

Dr. SMARTT: I think it will appeal to everybody that that is a very desirable thing to alter. I know of many cases of the same kind, and it is because we feel that these cases will lead to friction that we do hope the Imperial Government will draft a Bill which will be acceptable practically to all the Dominions, so that it will be only necessary for the Colonies to adopt the principles throughout the Empire.

Mr. GLADSTONE: The Bill as now drawn is with the object of meeting that point.

Dr. SMARTT: If you can meet the case of the non-European, it will at once simplify the matter.

Mr. GLADSTONE: That is a matter of very considerable difficulty, for reasons which I need not state. I think it would simplify matters, but that is the point we have to consider, and to get round in some way, in order to meet the views of the different Colonies.

CHAIRMAN: May I take it that this resolution is adopted?

The resolution was carried unanimously.

(XVII.)

NATURALIZATION.

No. 1.

REPORT OF THE INTER-DEPARTMENTAL NATURALIZATION COMMITTEE.

The Committee have met and considered what amendments might be made in the draft Naturalization Bill submitted to the Imperial Conference of 1907 in order to meet the criticisms offered on certain of its provisions at that Conference. The proceedings of the Conference are on pages 178-182 and 533-541 of [Cd. 3523], and in connection with them it is necessary to consider the Minute of the Cape Ministers on pages 94-99 of [Cd. 3524], though that Minute had reference not to the draft Bill, but to the Recommendations of the Interdepartmental Committee of 1901, which are embodied in the draft Bill.

Before proceeding to suggest definite amendments to the Bill, we would observe, generally, that the criticisms brought forward followed two main lines—(A) the question of the conditions on which Imperial naturalization should be granted, and (B) the question of the procedure by which Imperial naturalization may be effected in the Dominions of the Crown beyond the seas.

As to (A) the objection was raised that under the Bill as drafted, no adequate provision appears to be made for the exclusion of undesirable persons from naturalization. As a matter of administrative practice, evidence of good character is always now required by the Home Office, and the insertion of words embodying this practice would seem to meet the objection. This course would have the merit of relieving the self-governing Dominions of anxiety as to the results of reciprocity in naturalization with the Crown Colonies.

(General Botha page 132) (Cape Ministers, page 87, [Cd. 3524].)

The main objection under (A) had, however, reference to the case of persons of non-European race. There appeared to be some apprehension that acceptance of the Bill might involve some risk of interference with the policy adopted by some of the self-governing Dominions with respect to the terms of admission or residence of Asiatics or other coloured persons. We desire, however, to point out that the measure under consideration has very little bearing on the coloured race question. It is perfectly clear that naturalized persons cannot by naturalization acquire any greater or other rights than those possessed by natural-born British subjects. Any colonial law affecting

Cape Ministers, (pages 85-86 of Cd. 3524.)

General Botha, (page 131.)

Sir J. Ward, (page 135.)

the coloured races which applies to natural-born British subjects must equally apply and continue to apply to naturalized persons. We have in the British Empire at the present time at least 260,000,000 natural-born British subjects of Asiatic and African origin. The few Asiatics or Africans who might become naturalized would be but a drop in the ocean compared with the natural-born subjects of coloured race. But although the question in its practical results is a very small one, we have considered various modification of the Bill which might make its provisions more acceptable to the colonies. It must be taken for granted that the Parliament of the United Kingdom would not be prepared at present in an Imperial Act to draw a distinction between persons of European and non-European descent. Apart from the invidiousness of any such rule, it would hardly be a workable rule in practice. It would be absurd to provide that a Russian from St. Petersburg might be naturalised while a Russian from Siberia could not, or that a Jew from Turkey in Europe could be naturalized, while a Jew from Palestine could not.

(General Botha, page 131.) (Mr. Brodeur, page 130.)

As regards (B) the Bill as drafted provides that the method of bringing in into operation throughout the Dominions of the Crown beyond the seas should be by Order in Council. The question was raised at the Conference whether this involved interference with the legislative powers of self-governing Dominions, either generally, or in regard to the specific question of naturalization.

We would observe that the adoption of the Bill will involve no change as regards the question of local naturalization: that is to say a certificate of naturalization in any colony or dependency to which the provisions of Clause 26 (1) are not applied by Order in Council will only have effect within the territorial limits of that colony or dependency, although the holder of such a certificate will be entitled to a British passport ensuring to him the good offices of His Majesty's diplomatic and consular representatives if he goes into a foreign country. We would also add that local naturalization will continue to constitute the basis for a decision whether it is possible for an Order in Council to issue applying the Draft Bill to any dominion or colony. It will, of course, be competent to a colony to have two standards of naturalization, one which would qualify for local naturalization only, while the other, being not less stringent than that of the Imperial Act, might qualify for Imperial recognition.

On the question of interference with the legislative powers of the self-governing Dominions we would observe that if a certificate of naturalization is to have effect throughout the dominions of the King, this can only be effected by the intervention of the Imperial Parliament. A colonial legislature can only legislate for its own territory, and the operation of any colonial law is necessarily restricted to the boundaries of that colony. If naturalization which is to run throughout His Majesty's dominions is desired (and we see no indication to the

requisite in the proceedings of the Conference) it can only be effected through the agency of the Imperial Parliament. The object of the Bill in its application to the Dominions beyond the seas is to give extra-territorial effect to the laws passed by local legislatures.

With these preliminary observations we proceed to submit for consideration the following suggested amendments of the Bill.

We have assumed that His Majesty's Government still approve the recommendations of the Interdepartmental Committee of 1901, and the reasons on which they are founded. The suggestions we make are by way of concessions to Colonial criticisms and to render the Bill more acceptable to the great self-governing dependencies.

(1) We think that the long title of the Bill should be altered. It is scarcely correct since the passing of the Aliens Act, 1905, which it is not proposed to consolidate. We think the title should be "A Bill to consolidate and amend the enactments relating to naturalization, British Nationality, and the status of Aliens."

(2) Clause 7 proposes that five years' residence in any part of His Majesty's dominions should qualify for naturalization, either in that part or in any other part. The object of this provision is to enable past residence and future residence in the Colonies to be reckoned towards qualification for a certificate granted by the Secretary of State.

We think this Clause should be qualified by providing that if the applicant has during the qualifying period resided in different portions of His Majesty's dominions he must, immediately before his application, have resided for not less than twelve months in that part of His Majesty's dominions in which he seeks to be naturalized. If some such condition be not inserted enquiry into the character and antecedents of the applicant would be a matter of great difficulty. If the condition suggested be thought too stringent, it might be sufficient that the period of twelve months' residence should be within the two years immediately preceding the application. (General Botha page 132.)

The suggestion that an applicant for naturalization should be required to specify his intention to reside in the place where he is naturalized would be a reversion to the existing law which it is one of the main objects of this Bill to alter, and which has operated with great hardship in the past, to the exclusion of men of high standing from full British citizenship. (General Botha page 133.)

(3) Clause 8 as it stands only requires the applicant to produce evidence of his past residence and his intention to reside for the future in British dominions, though it leaves an absolute discretion to the Secretary of State to exclude any applicant without giving reasons.

We think that many of the Colonial objections would be met if the main conditions at present insisted on by the Secretary

of State, in the exercise of this discretion, were embodied in the Bill itself, and we suggest the addition of words to make it clear that the applicant must produce—

(*a*) evidence of good character; and

(*b*) evidence that he has an adequate knowledge of the English language.

As regards (*a*) it is the practice of the Home Office that in each case there should be a police report on the applicant's character, which further has to be vouched for by four referees. It is not merely the person who has been convicted of serious crimes that has to be guarded against, but the person who would be an undesirable citizen and who would be liable to expulsion under the Aliens Act if convicted of any offence punishable by imprisonment, *e.g.*, keepers of gaming houses and brothels, souteneurs, and fraudulent bankrupts.

As regards (*b*) the condition at present imposed by the Home Office that a person seeking naturalization must be able to speak and read English would automatically exclude the vast majority of the members of the coloured races who would be likely to seek admission in any self-governing dominion. It is also worthy of adoption in the Bill on its merits. By naturalization under the Bill a man acquires a right to enter the public service, to vote for Parliament and for Municipal Elections in the United Kingdom, and to be elected a member of the British Parliament. Obviously he is unfit to have these privileges unless he has such knowledge of the English language as would enable him to understand and take part in the controversies of the day. He ought to be able to speak, read, and write English with reasonable facility.

(General Botha page 132.)

(4) We propose no amendment to Clause 9. That clause merely removes doubt by affirming the principle that naturalization by a Secretary of State operates throughout the dominions of the Crown and puts naturalized persons on the same footing as natural-born British subjects. We agree with the Committee of 1901, who say "It is impossible to ask a foreign country to deprive its subjects of their nationality, unless this country is in a position to offer in return the status of a British subject, recognized everywhere, both within and without His Majesty's dominions." We have already pointed out that any Colonial law which applies to Asiatics or Africans who are natural-born British subjects would equally apply to naturalized subjects.

(Cape Ministers, page 87 of Cd. 3523.)

(5) Clause 12 introduces for the first time a power to revoke certificates of naturalization on the ground that they have been obtained by false representation or fraud, and is admittedly a desirable addition to the law.

(Mr. Deakin, page 131.)

It was suggested that the discretion of the Secretary of State to revoke should be unqualified, just as his discretion to admit to naturalization is unqualified. We see strong objections to this suggestion. Naturalization alters the status not only of

the person naturalized, but of his wife and children, and it involves the loss of his former nationality. We think, therefore, that revocation should be confined to the case of naturalization obtained by fraud or false representation.

(6) In Clause 17 (5), which deals with the naturalization of minors, we prefer the wider terms of the alternative subsection, but we suggest that instead of the words "the conditions described in Section 8" there should be substituted the words "all or any of the conditions described in Section 8."

It would be absurd to require that an infant in arms residing with its mother should have to produce evidence of good character and an adequate knowledge of the English language, but those conditions might very well be enforced with reference to a lad of 18 or 20 years of age. On the other hand, the naturalization of a minor ought to be an exceptional matter, justified only by exceptional reasons.

(7) Clause 24 provides for the punishment of persons making false declarations under the Act, but the only machinery it provides is the cumbrous and complicated method of prosecution on indictment. We think that the provisions of the Act would be much more effective if false declarations, at any rate in minor cases, could be dealt with summarily by proceedings before a magistrate. Prosecution by indictment should be reserved for cases of special aggravation. A small punishment quickly inflicted is often more effective than a severer punishment which involves a long and cumbersome procedure.

We suggest, therefore, that at the end of the clause the following words should be added—"or on summary conviction to imprisonment with or without hard labour for any term not exceeding three months."

(8) We have considered again the provisions of Clause 26, which authorizes His Majesty in Council to give Imperial effect to local certificates of naturalization. In our preliminary observations we have dealt with the general principles involved in this procedure, and we think that some of the objections to the Clause might be removed if instead of providing as a condition of Imperial naturalization that the conditions to be fulfilled must be substantially the same as those of the Imperial Bill, provisions were made that the conditions should be not less stringent than those of the Imperial Bill.

It seems, however, desirable at this point to examine the suggestion for an alternative procedure which was made by General Botha on behalf of the Transvaal. This suggestion was that provision should be made in the Bill that certain portions of it might be put into force in any portion of His Majesty's dominions by Proclamation of the Governor which would be issued on the advice of responsible Ministers; the Imperial Act would provide that the Proclamation should name the authority to issue certificates of naturalization and that certificates so issued should have effect as if issued by the

(General Botha page 131.)

Imperial Secretary of State. We would observe that any criticism levelled against Clause 26 in its present shape as involving interference with the powers of a self-governing Colony would seem to be equally applicable to the alternative suggestion. The Order in Council would, of course, not issue except after consultation with, and with the consent of, the Colonial Government, and it might be well to state expressly in the Bill that in the case of the self-governing Dominions the Order in Council would issue at the request of the Colonial Government.

(9) Under the English Common Law, which is reproduced in the first sub-section of Clause 28, nationality is determined by place of birth. Any person born in any part of the dominions of His Majesty is a natural-born British subject. We do not consider it practicable to make the exception proposed in General Botha's memorandum that the child of an alien indentured labourer of non-European descent should not be deemed to be a natural-born British subject. We understand that the exception is not at present maintainable in South Africa under the Roman Dutch Common Law, and, as we have already pointed out, we do not consider it possible to draw such a distinction under an Imperial Act.

(General Botha page 133.)

(10) We have dealt above with the question of the continuance of local naturalization. It is possible that the self-governing Dominions may prefer to have this question specially safeguarded in the Bill and, if so, the end could be obtained by a further saving in Clause 29. The alternative would be to express it in a separate clause of the Bill.

The above are the detailed amendments which we have to suggest in the Bill. We think it proper to add certain observations arising mainly out of the amendment proposed in Clause 8. The Bill cannot be applied to any colony under Clause 26 unless it appears that under the law of that colony the conditions to be fulfilled by aliens with respect to naturalization are substantially the same as, or, as we suggest, not less stringent than, those required under the Bill. Whether this is or is not the case in any given instance is a matter which would require careful consideration when the occasion arises. It is sufficient for our present purpose to note two main differences between the conditions provided by colonial naturalization laws and those provided in the draft Bill, viz.: (*a*) that in some cases[1] there is an express bar to the naturalization of non-Europeans; (*b*) that in some cases[2] the term of residence required as a condition of naturalization is shorter.

As regards (*a*), it may be fairly held that the provision in Clause 8 that an applicant must have an adequate knowledge

[1] The Australian Commonwealth Act 11 of 1903, excludes "aboriginal natives of Asia, Africa, or the Islands of the Pacific, excepting New Zealand"; the Natal Act 18 of 1905, specified "European birth or descent."

[2] *e.g.* in Australia two years, in Canada three years.

of the English language approximates in substance to the condition in the Australian and Natal laws as to European birth or descent.

As regards (*b*), those Dominions where a shorter period of residence is required as a condition of naturalization will no doubt consider whether, in view of the advantages of a uniform scheme of Imperial naturalization, they can properly introduce any modification in the terms of their legislation. As has been already pointed out above, such modification would not necessarily involve a departure from the present standard of local naturalization. It will be remembered that in South Africa the five years' term is universally accepted by law or practice.

We would add one remark about India. As fas as we know very few persons are naturalized in India for the purposes of residing in any country other than India. India, therefore, has very little practical interest in this Bill. She is, of course, deeply interested in anv legislation which affects those of her 230,000,000 natural-born subjects who may emigrate to or may be resident in other parts of His Majesty's dominions. But that is a matter entirely untouched by the present Bill, and any recommendations with respect to it are entirely outside the scope of the measure.

The Committee desire to express to their Secretary, Mr. W. A. Robinson, their best thanks for his valuable services.

M. D. CHALMERS,
H. W. JUST,
WILLOUGHBY MAYCOCK,
S. G. SALE.

W. A. Robinson, Secretary,
24th July, 1908.

[NOTE.—The Bill is reprinted from Cd. 3524, pp. 127-36. Alterations proposed by the Committee are shown in underlined type and Small caps.]

DRAFT OF A BILL TO CONSOLIDATE AND AMEND THE ENACTMEMTS RELATING TO ALIENS AND NATURALIZATION. A.D. 1907

NATURALIZATION, BRITISH NATIONALITY, AND THE STATUS OF ALIENS.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Status of Aliens.

Capacity of an alien as to property. [33 Vict. c. 14. s. 2.]

1. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a natural-born British subject: Provided that this section shall not—

(1) Confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise: or

(2) Entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him: or

[(3) Affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the twelfth day of May, one thousand eight hundred and seventy, or in pursuance of any devolution by law on the death of any person dying before that day.]

Saving as to British ships. [33 Vict. c. 14 s. 14.]

2. Nothing in this Act contained shall qualify an alien to be the owner of a British ship.

Power of naturalized aliens to divest themselves of their status in certain cases. [33 Vict. c. 14. s. 3.]

3. Where his Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for His Majesty, by Order in Council, to declare that such convention has been entered into by His Majesty; and from and after the date of such Order, any person, being originally a subject or citizen of the state therein referred to, who has been naturalized as a British subject, may, within the limit of time provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration he shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid.

Trial of alien. [33 Vict. c. 14. s. 5.]

4. An alien shall be triable in the same manner as if he were a natural-born British subject.

Expatriation.

How British-born subject may cease to be such. [33 Vict. c. 14. s. 4.]

5.—(1) Any person who by reason of his having been born within His Majesty's dominions is a natural-born British subject, but who at his birth became under the law of any foreign state a subject also of that state, and is still such a subject, may, if of full age and not under disability, make a declaration of

alienage, and from and after making the same shall cease to be a British subject [and shall be deemed to be an alien].

(2) Any person born out of His Majesty's dominions of a father being a British subject may, if of full age, and not under disability, make a declaration of alienage, and from and after making the same shall cease to be a British subject [and shall be deemed to be an alien.]

Capacity of British subjects to renounce allegiance to His Majesty. [33 Vict. c. 14. s. 6.]

6. A British subject who, when in any foreign state and not under disability, *by any voluntary and formal act [whether by obtaining a certificate of naturalization or otherwise]* becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject [and shall be deemed to be an alien].

NATURALIZATION AND RESUMPTION OF BRITISH NATIONALITY.

Secretary of State may grant certificate of naturalization. [33 Vict. c. 14. s. 7.]

7. An alien who, within such limited time before making the application hereinafter mentioned as has been under any Act hereby repealed or may be allowed by the Secretary of State, either by general order or on any special occasion, has resided in *His Majesty's dominions* for not less than five years or has been in the service of the Crown for not less than five years, and who intends, when naturalized, either to reside in *His Majesty's dominions* or to serve under the Crown, may apply to the Secretary of State for a certificate of naturalization.

PROVIDED THAT IF DURING THE QUALIFYING PERIOD OF FIVE YEARS THE ALIEN HAS RESIDED IN MORE THAN ONE PART OF HIS MAJESTIES DOMINIONS, HE MUST IMMEDIATELY BEFORE HIS APPLICATION, HAVE RESIDED FOR NOT LESS THAN TWELVE MONTHS IN THAT PART OF HIS MAJESTIES DOMINIONS IN WHICH HE APPLIES FOR NATURALIZATION.

Proceedings to be taken to obtain certificate. [33 Vict. c. 14. s. 7.]

8. The applicant shall adduce in support of his application evidence of his residence or service and intention to reside or serve, AND SHALL ALSO ADDUCE EVIDENCE OF GOOD CHARACTER AND EVIDENCE THAT HE HAS AN ADEQUATE KNOWLEDGE OF THE ENGLISH LANGUAGE. The Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

Effect of naturalization. [33 Vict. c. 14. s. 7.]

9.—(1) A *naturalized person* shall be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, *duties and liabilities* to which a natural-born British subject is entitled or subject *and shall to all intents and purposes have, as from the date of his naturalization, the status of a natural-born British subject.*

A.D. 1907. 12 & 13 Will. 3. c. 2.

(2) *In section three of the Act of Settlement (which disqualifies naturalized aliens from holding certain offices), the words "naturalized or" shall be repealed.*

Special certificate in case of doubt. [33 Vict. c. 14. s. 7.]

10. The Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject and the grant of such special certificate under this Act, or any Act hereby repealed, shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

As to aliens naturalized before the Act. [33 Vict. c. 14. s. 7.]

11. An alien who has been naturalized before the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and the Secretary of State may grant him a certificate on *such* terms and conditions as *he may think fit.*

Revocation of certificate of naturalization.

12.—(1) *Where it appears to the Secretary of State that a certificate of naturalization has been obtained by false representations or fraud, the Secretary of State may by order revoke the certificate, and the order of revocation shall have effect from such date as the Secertary of State may direct.*

(2) *Where the Secretary of State revokes a certificate of naturalization he may order the certificate to be given up and cancelled, and any person refusing or neglecting to give up the certificate shall be liable on summary conviction to a fine not exceeding one hundred pounds.*

Saving of allegiance prior to expatriation. [33 Vict. c. 14. s. 15.]

13. Where any British subject has become an alien, he shall not thereby be discharged from any obligation, duty, or liability in respect of any act done before he so became an alien.

National Status of Married Women and Infant Children.

National status of married women. [33 Vict. c. 14. s. 10 (1).]

14. A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject.

Alternative.—As regards married women, the wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien.

Status of widows. [33 Vict. c. 14. s. 10 (2).]

15. A woman, being a natural-born British subject, who by or in consequence of her marriage has become an alien shall not, by reason only of the death of her husband, cease to be an alien.

16. *The status of a divorced woman shall be the same as the status of a widow.* Status of *divorced women.*

17. (1) *Where an alien obtains a certificate of naturalization, the Secretary of State may, if he thinks fit, on the application of that alien, include in the certificate the name of any child born before the date of the certificate, and that child shall thereupon become a British subject; but any child so naturalized may, within one year after attaining his majority, make a declaration of alienage, and shall thereupon cease to be a British subject.* Status of children.

[(2) *Every child of a naturalized father born after naturalization shall be deemed to be a British subject.*] [Qu, in cl. 9.]

(3) *Subject to the provisions of the next succeeding subsection, where a British subject becomes an alien, whether by declaration of alienage or otherwise, every child of that person, being a minor, shall thereupon cease to be a British subject [whether he be resident with his father or not.]*

(4) *Where a widow, who is a British subject marries an alien, any child of hers by her former husband shall not by reason only of her marriage cease to be a British subject [whether he is residing outside His Majesty's dominions or not.]*

(5) *Where a woman who was a British subject has lost her nationality by or in consequence of her marriage, and is thereafter left a widow, the Secretary of State may, if he thinks fit grant a certificate of naturalization to any child of that marriage, although the conditions described in section eight of this Act have not been complied with.*

Alternative.—(5) *The Secretary of State may, in his discretion, and for good cause shown, grant a certificate of naturalization to any minor, although* ALL OR ANY OF *the conditions described in section eight of this Act have not been complied with.*

(6) *Except as provided by this section, a certificate of naturalization [or alienage] shall not be granted to any person under disability.*

Procedure and Evidence.

18. The Secretary of State may *make regulations for carrying into effect the objects of this Act, and in particular* make such regulations as he thinks fit in respect of the following matters:— Regulations to be made by Secretary of State. [33 Vict. c. 14. s. 11. 33 and 34 Vict. c. 102. s. 1.]

(1) The form and registration of certificates of naturalization in the United Kingdom:

(2) The form and registration of declarations of alienage:

(3) The registration by officers in the diplomatic or consular service of His Majesty's of the births and deaths of British subjects born or dying out of His Majesty's dominions:

(4) The persons by whom the oath of allegiance may be administered, *and the persons before whom declarations of naturalization and alienage may be made:*

(5) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested:

(6) The registration of such oaths:

(7) The persons by whom certified copies of such oaths may be given:

(8) The transmission to the United Kingdom, for the purpose of registration or safe keeping, or of being produced as evidence, of any declarations, certificates, or oaths made or taken in pursuance of this Act or of any Act hereby repealed out of the United Kingdom, or of any copies thereof, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of this Act or any Act hereby repealed:

(9) The proof in any legal proceeding of such oaths:

(10) With the consent of the Treasury the imposition and application of fees in respect of any registration authorized to be made by this Act or any Act hereby repealed, and in respect of the making of any declaration or the grant of any certificate authorized to be made or granted by this Act or any Act hereby repealed, and in respect of the administration or registration of any oath.

Effect of regulations. [33 Vict. c. 14. s. 11.]

19. Any regulation made by the said Secretary of State in pursuance of this Act [or of any Act hereby repealed] shall be of the same force as if it had been enacted herein, but shall not, so far as respects the imposition of fees, be in force in any British possession, and shall not, so far as respect any other matter, be in force in any British possession in which any Act or Ordinance to the contrary of or inconsistent with any such regulation may for the time being be in force.

Regulations as to evidence of declarations. [33 Vict. c. 14. s. 12.]

20. Any declaration made under OR FOR THE PURPOSES OF this Act, or under OR FOR THE PURPOSES OF any Act hereby repealed, may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by the Secretary of State, or by any person authorized by him in that behalf, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date therein mentioned.

Evidence of certificate of naturalization. [33 Vict. c. 14. s. 12.]

21. A certificate of naturalization may be proved in any legal proceedings by the production of the original certificate, or of any copy thereof certified to be a true copy by the Secretary of State, or by any person authorized by him in that behalf.

22. Entries in any Register made in pursuance of this Act, or under any Act hereby repealed, shall be proved by such copies and certified in such manner as may be directed by the Secretary of State, and the copies of such entries shall be evidence of any matters by this Act or by any Act hereby repealed, or by any regulation of the Secretary of State, authorized to be inserted in the register.

Entries in registers. [33 Vict. c. 14. s. 12.]

23. The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State in pursuance of this Act or of any Act hereby repealed.

Application of 31 & 32 Vict. c. 37 to regulations.

24. Any person wilfully and corruptly making or subscribing any declaration under OR FOR THE PURPOSES OF this Act, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for any term not exceeding twelve months or on SUMMARY CONVICTION TO IMPRISONMENT WITH OR WITHOUT HARD LABOUR FOR ANY TERM NOT EXCEEDING THREE MONTHS.

Penalty on making false declaration. [33 & 34 Vict. c. 102 s. 2.]

25. The oath of allegiance shall be in the form set forth in the First Schedule to this Act.

Form of oath of allegiance. [33 Vict. c. 14. s. 9.]

POWERS OF LEGISLATURES AND GOVERNORS IN BRITISH POSSESSIONS.

26.—(1) *Where it appears to His Majesty in Council that under any law for the time being in force in any British possession, the conditions to be fulfilled by aliens with respect to naturalization are* substantially the same as NOT LESS STRINGENT THAN *those required for the grant of certificates of naturalization under this Act, His Majesty may by Order in Council empower the Governor of that possession in his discretion to grant to any person naturalized in that possession a certificate of naturalization in the prescribed form, and that certificate shall have effect to all intents and purposes as if it were a certificate of naturalization granted by the Secretary of State under this Act.*

Naturalization of aliens in British dominions outside the United Kingdom.

(2) *His Majesty may revoke any such Order if it appears to His Majesty that the law of the British possession referred to in the Order has been so altered as to make it inexpedient that the Order should continue in force.* NO LONGER CONFORMS WITH THE CONDITIONS PRESCRIBED BY THE FOREGOING PROVISIONS OF THIS SECTION.

(3) *As regards any British possession with respect to which no such Order in Council has been made, or with respect to which the Order in Council has been revoked, the Governor of that possession may, in the prescribed form, and subject to any regulations made by the Secretary of State, make a recommendation to the Secretary of State that a certificate of natural-*

ization should be granted to any specified alien resident or serving the Crown in that possession, and thereupon the Secretary of State may, if he thinks fit, grant a certificate of naturalization accordingly.

(4) *Where in any British possession there is a Governor-General and also subordinate governors, the expression "Governor" means the Governor-General, and in the case of India means Governor-General in Council.*

Power of colonies to legislate with respect to local naturalization. [33 Vict. c. 14. s. 16.]

27. All laws, statutes, and ordinances made by the legislature of a British possession for imparting to any person any of the privileges of naturalization to be enjoyed by him within the limits of that possession, shall within those limits have the authority of law, but subject to be confirmed or disallowed by His Majesty.

NATURAL-BORN BRITISH SUBJECTS.

Definition of natural-born British subject. [25 Edw. 3, stat. 1. 7 Anne, c. 5. 4 Geo. 2. c. 21.]

28.—(1) *The following persons shall be deemed to be natural-born British subjects, namely,—*

(*a*) *Any person born in His Majesty's dominions* [*and ligeance*]; *and*

(*b*) *Any person born out of His Majesty's dominions, whose father was born in His Majesty's dominions, and was a British subject at the time of that person's birth; and*

(*c*) *Any person born on a British ship* [*whether in foreign territorial waters or not*].

(2) *A person born on a foreign ship shall not be deemed to be a British subject by reason only that the ship was in territorial waters at the time of his birth.*

13 Geo. 3, c. 21.

(3) *The British Nationality Act,* 1772, *which naturalizes under certain conditions the grandchildren of natural-born British subjects born abroad, is hereby repealed.*

Supplemental.

Saving of letters of denization, &c. [33 Vict. c. 14. s. 13.]

29. Nothing in this Act shall affect—

(1) the grant of letters of denization by His Majesty; or

(2) *the ex-territoriality of embassies and diplomatic missions; or*

(3) *the status of the child of an alien enemy.*

(4) THE EFFECT OF ANY NATURALIZATION LAW IN ANY BRITISH POSSESSION OPERATING ONLY WITHIN THE LIMITS OF THAT POSSESSION.

Repeal of Acts.

30. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

31. In this Act, unless the context otherwise requires— Definitions. [33 Vict. c. 14. s. 17.]

"Disability" means the status of being an infant, lunatic, idiot, or married woman:

"Prescribed" means prescribed by regulations under this Act.

32. This Act may be cited as the Aliens and Naturalization Act. 1907. Short title. [33 Vict. c. 14. s. 1.]

SCHEDULES.

FIRST SCHEDULE.

Oath of Allegiance.

"I, do swear that I will be faithful and bear true allegiance to His Majesty King Edward the Seventh, his heirs and successors according to law. So help me GOD." [Cf. 33 Vict. c. 14. s. 9.]

[N.B.—In the case of persons entitled and wishing to affirm, this form may be modified in manner prescribed by the Oaths Act, 1888.] 51 & 52 Vict. c. 46.

SECOND SCHEDULE.

Enactments Repealed.

Session and chapter.	Title or Short Title.	Extent of Repeal.
25 Edw. 3. stat. 1...	Statue for those who are born in parts beyond the seas.	From "and in the right of other children" to the end of the statute.
12 & 13 Will 3. c. 2.	The Act of Settlement	In section three the words "naturalised or."
7 Anne, c. 5..... ...	The Foreign Protestants (Naturalization) Act, 1708.	The whole Act.
4 Geo. 2. c. 21.....	The British Nationality Act, 1730.	The whole Act.
13 Geo. 3. c. 21.	The British Nationality Act, 1772.	The whole Act.
33 Vict. c. 14..... .	The Naturalization Act, 1870.	The whole Act.
33 & 34 Vict. c. 102.	The Naturalization Oath Act, 1870.	The whole Act.
35 & 36 Vict. c. 39.	The Naturalization Act, 1872.	The whole Act.
58 & 59 Vict. c. 43.	The Naturalization Act, 1895.	The whole Act.

No. 2.

AUSTRALIA.

The Acting Governor-General to the Secretary of State.

(Received 5 February, 1910.)

Commonwealth of Australia,
Governor-General's Office,
Melbourne, 24th December, 1909.

My Lord,—

Referring to your Lordship's despatch, dated the 9th November, 1908,[1] I have the honour to inform you that the Government of the Commonwealth have given careful consideration to the report of the Inter-Departmental Naturalization Committee, and to the proposal for a Conference to discuss the terms of the draft Bill. If that Conference is thought necessary, Ministers will arrange to be represented thereat, probably by the High Commissioner.

2. At the outset I may inform your Lordship that the Commonwealth Government are strongly in favour of the principle of Imperial naturalization, and have endeavoured to meet difficulties in the way which are not entirely solved by the proposals of the Committee. They appreciate the value of the suggestions made, which render the proposed measure in its present form a great improvement on that submitted to the Imperial Conference of 1907.

Clause 9.

3. The Prime Minister informs me that, in the consideration of the measure, the first real difficulty met with, and perhaps the most important, is concerned with Clause 9, which provides for the grant to a naturalized person of the full rights and privileges, duties and liabilities, of natural-born British subjects. The Commonwealth Government are not fully aware of the provisions of the laws of other parts of the Empire, but would specially invite attention to Sections 16 and 34 of the Constitution of the Commonwealth and other Australian laws, Federal and State, mentioned in the schedule attached hereto, forming a list of measures passed by different Parliaments at different times which would be overridden if the proposed clause were passed. Although appreciating fully the arguments in favour of an unrestricted grant, they would suggest for consideration that perhaps some provision might be inserted similar to that in Section 8 of the Commonwealth Naturalization Act, 1903, which is as follows:—

> "8. A person to whom a certificate of naturalization is granted shall in the Commonwealth be entitled to all political and other rights, powers, and privileges, and be sub-

[1] No. 164 in [Ed. 5273].

ject to all obligations to which a natural-born British subject is entitled or subject in the Commonwealth.

"Provided that where by any provision of the Constitution or of any Act or State Constitution or Act a distinction is made between the rights, powers, or privileges of natural-born British subjects, and those of persons naturalized in the Commonwealth or in a State, the rights, powers, and privileges conferred by this Section shall for the purposes of that provision be only those (if any) to which persons so naturalized are therein expressed to be entitled."

If this be considered too great a departure from the spirit of the proposed clause, the Commonwealth Government suggest that perhaps it might be arranged that the national status should have existed for a certain period before the naturalized person is qualified for the particular high offices and for the enjoyment of the other privileges of citizenship which are referred to in the laws mentioned in this schedule.

4. It would appear to be an obstacle almost, if not quite, insuperable to the recognition of any Imperial certificate of naturalization within the Commonwealth if that certificate were held to confer on its holder greater rights in Australia than the certificate issued under the local law.

5. Ministers think that it will probably be considered desirable to amend this clause so as to make the authority which grants the certificate the only authority competent to revoke it; *e.g.,* if a certificate were granted in Australia by the Governor-General, it would appear to be a wise provision that its revocation could only be made by the Governor-General in Australia, where evidence as to the false representations or fraud on which it was obtained could be most readily procured. Clause 12.

6. Power should be given to the local authorities to make regulations as to procedure. These would, *mutatis mutandis,* as nearly as possible conform to those approved by the Colonial Office, but it would be obvious that, for example, persons by whom the oath of allegiance may be administered may in the Dominions be known by different designations from those applied in the United Kingdom. Clause 18.

7. This clause has been the subject of much consideration on the part of the Law Advisers of the Commonwealth Government, who, while having the strongest desire that some system of Imperial naturalization should be brought into force, are unable to recommend the adoption of the proposals therein. In the first place they do not think that the words "not less stringent than" are an improvement on those formerly inserted. They do not afford any fair basis for a comparison. For instance, could it be said that three years' residence plus educational plus property qualifiactions were more or less stringent than five years' residence plus educational qualifications? But it is also considered that the procedure suggested is unnecessarily cumbersome, and it is suggested that the Clause 26.

clause might be altered so as to give power to the Governor-General of any British Possession, if thereto authorized by the law of the Possession, to grant a certificate of Imperial naturalization to any person who has in fact fulfilled the conditions required by Imperial law. This would enable the Imperial Parliament to retain control of the policy of issuing Imperial certificates and would avoid the necessity for any Order in Council and obviate the delay inevitable from the adoption of any such procedure as that suggested in Sub-clause 3. They would strongly urge this alternative course as greatly simplifying the action to be taken and as possibly enabling citizens of a Dominion to which, if the proposed clause were adopted, the Order in Council could not be made to apply to obtain Imperial certificates without inconvenience. While dealing with this clause, Ministers point out that the phrase "subordinate Governors" in Sub-clause 4 can perhaps hardly be correctly applied to the Governors of the States of the Commonwealth, who are not subordinate to the Governor-General.

Clause 28, sub-clause 2.

8. It does not appear clear whether this clause applies when the foreign ship in British territorial waters is also actually in a harbour in the British Dominions.

9. It is further suggested that it will probably be well to add a provision to the proposed law to the effect that where citizens who have obtained certificates of Imperial naturalization remove from that part of the Empire in which they obtained such certificate for the purpose of settling in some other part they should be obliged to register their certificates with some central authority before they can be regarded as evidence entitling the holders to the privileges of British citizenship in the Possession.

10. The Commonwealth Government regret that they could not see their way to ask Parliament to reconsider the existing Naturalization Act with a view to so altering its terms as to bring it into harmony with the proposed Imperial law. It appears to them most unlikely that Parliament would consent to lengthen the term of residence (two years) required in Australia before naturalization, nor would Parliament be prepared to sanction the imposition of any fee on applicants. They would, however, be prepared to submit to Parliament proposals conferring on the Governor-General power to grant certificates of Imperial naturalization as before suggested.

11. The Prime Minister has intimated to me that the Commonwealth Government will be very glad if this matter, as presented herein, can receive the fullest consideration, and further—if opportunity offers—would much appreciate the receipt of your Lordship's views on the proposals now submitted, before the intended Conference is opened.

I have, &c.,

CHELMSFORD,

Administrator.

No. 3.

AUSTRALIA.

The Secretary of State to the Governor General.

DOWNING STREET, 3 June, 1910.

MY LORD,

I HAVE the honour to acknowledge the receipt of Lord Chelsmford's despatch of the 24th of December,[1] containing an expression of the views of your late Ministers on the Report of the Inter-Departmental Committee on Naturalization.[2] I am glad to note that Ministers recognised the value of the suggestions made by the Committee.

2. The general position of the matter is that despatches[3] respecting the report of the Committee, of which copies are enclosed, have been received from Newfoundland and from the South African Colonies. The Governments of the Dominions of Canada and New Zealand have not yet furnished me with an expression of their views. Pending the receipt of replies from these two Dominions, and pending the receipt of a statement of its views from the newly-formed Government of the South African Union, it would be premature to proceed with the summoning of the subsidiary Conference proposed in my despatch of the 9th of November, 1908.[4] In the meantime, I desire to offer the following observations on the suggestions made by Ministers.

3. Clause 9. As at present advised I agree that the point as to conflict with Acts of Parliament in the Dominions is sound, and that an amendment of the clause should be made to meet it. I consider, however, that for the purposes of this Bill the proviso quoted from Section 8 of the Commonwealth Naturalization Act is somewhat too rigid in its terms and that it would be preferable to limit the language of the proviso to safeguarding the suspension for a limited time of the full rights granted to naturalised persons which may be provided for by law in the United Kingdom, the Dominions, or the Colonies.

4. Clause 12. I am inclined to view with favour the suggestion that the authority which issues a certificate should also revoke it, but the point is one which may usefully be discussed by the subsidiary Conference, as there may be grounds of convenience for providing for a central revoking authority, in view of the fact that holders of certificates may move about from one Colony to another. It will probably in any case be convenient

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[1] No. 2. [2] No. 1.
[3] Nos. 165-168 in [Cd. 5273]: the reply from the Cape is not printed.
[4] No. 164 in [Cd. 5273].

to leave the Secretary of State as the sole revoking authority for all parts of the Empire except the self-governing Dominions.

5. Clause 18. I fully appreciate the point made, and consider that it will be desirable to insert a sub-clause giving the Governments of Colonies or Dominions power to adapt the regulations to the local circumstances. I think, however, that such power of adaptation need not go beyond the regulations provided for by 4, 5, 6, 7, and 9 of Clause 18. Clause 19 appears to safeguard the position of the Colonies in respect of Clause 18 (10).

6. Clause 26. I consider that the clause as it stands should remain for Colonies other than the self-governing Dominions; but I think there are strong arguments in favour of the adoption of the proposal of Ministers as preferable, in the case of the Dominions, to the procedure provided for in the clause. It should, however, remain possible for a Dominion to adopt the procedure by Order in Council if it desired to do so. This matter is one which will require the careful consideration of the subsidiary Conference.

To meet the point raised as to the phrase "subordinate Governors," I would propose to substitute for Clause 26 (4) a definition clause on the lines of that in Section 7 of the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict., cap. 73), omitting, of course, the reference to the Governors of constituent Colonies.

7. Clause 28 (2). I am indebted to Ministers for noting the point as to harbours. The position under the existing law of persons born on foreign ships while passing through British territorial waters is not altogether clear, and there would seem to be risk of cases of double nationality arising. The point will be one for careful consideration later on.

8. The point raised in paragraph 9 of your despatch is one which should be carefully considered by the Conference. I apprehend that the central authority referred to is a central authority in the Dominion concerned, and I am inclined to think that some inconvenience might result from the statutory registration proposed. It is for consideration whether the object could not be obtained by an arrangement for periodical exchange of lists of persons who have received naturalization certificates.

9. I am forwarding a copy of Lord Chelmsford's despatch under acknowledgment and of this reply to the Governments of all Dominions, in order that the points raised may receive consideration, together with the Report of the Committee, in anticipation of the meeting of the subsidiary Conference.

I have, &c.,

CREWE.

No. 4.

SOUTH AFRICA.

The Governor-General to the Secretary of State.

(Received 11 February, 1911.)

GOVERNMENT HOUSE, JOHANNESBURG, 25th January, 1911.

SIR,

WITH reference to my despatch of the 14th December[1] and to my telegram of 23rd January,[2] I have the honour to transmit herewith a copy of a minute from my Ministers on the subject of Imperial naturalization.

I have, &c.,

GLADSTONE,

Governor-General.

Enclosure in No. 4.

(Minute 47.)

UNION OF SOUTH AFRICA, PRIME MINISTER'S OFFICE,

CAPE TOWN, 14 January, 1911.

Ministers have the honour to express their regret at the considerable delay which has taken place in expressing their views on the draft Imperial Bill on Naturalization and the report of an inter-departmental committee in connection therewith. Not only has the immense pressure of work resulting from the establishment of the Union of South Africa prevented Ministers from attending to this matter sooner, but they have also felt that the principles involved in the Bill are of a far-reaching character and require ample and mature consideration. If the remarks they are now going to make are on the whole unfavourable to the Bill, Ministers wish to assure His Majesty's Imperial Government that that is due entirely to the inherent difficulties which seem to surround the attainment of so laudable an object as the establishment of a uniform system of naturalization throughout the Empire.

In the first place, Ministers feel great difficulty about the constitutional groundwork of the Bill. It is, of course, true that the British Parliament has sovereign legislative power

[1] Not printed (interim reply to No. 172 in [Cd. 5273].)
[2] Not printed. It summarized the views expressed in the minute enclosed in this despatch.

throughout the Empire and that the legislative authority of the Dominion Parliaments is restricted to their own territorial limits, and that, therefore, a uniform law for the Empire requires the intervention of the Imperial Parliament. At the same time, it would appear to be a grave departure from established practice to pass an Imperial measure intimately affecting the Dominions without reference to their own local Parliaments. Such a departure may come to be looked upon as a precedent for similar action in future, and is on that ground likely to rouse suspicion and create difficulties in the Dominions. Ministers, therefore, think that the Bill should make provision that it will not be applied to any self-governing Colony without the previous resolutions of both Houses of its Parliament approving of such a step. It may, of course, happen that some local legislature or other may decline to pass such resolutions and thereby prevent the Act from having universal application; but it would be more politic to face this than to arouse a feeling on the part of local legislatures that they are being overridden in matters which intimately concern their people. Ministers would emphasize that, in view of the sentiment towards union which is now growing in the Empire, it is specially important not to start a constitutional principle which might appear to the overseas Dominions to threaten that full local authority which they have hitherto exercised unhampered.

In the second place, Ministers would point out that, in spite of the trenchant arguments adduced by the Inter-departmental Committee, the naturalization of coloured aliens by an Imperial authority will create grave difficulties in South Africa. During the discussion of the Naturalization Bill which has just become law in the Union the undesirability of the naturalization of Asiatics was frequently emphasized, and in the face of the strong South African feeling on this question, no Government here would venture to naturalize that class of aliens of whom there are thousands in South Africa. Under the proposed Bill, then, this sort of anomaly would arise, viz., that an Asiatic resident in the Union, who has no chance whatever of being naturalized in the Union by the Union Government, will be in a position to get naturalized by the Secretary of State and thereafter will be a naturalized British subject in the Union. Ministers, of course, understand the practical impossibility for an Imperial Act to draw a colour line in matters of this kind; but in several of the Dominions the colour question has assumed the gravest importance, and, even where this is not accentuated by the legislation, it is fully recognized by the administrative practice, of the Dominions concerned. Even as between the rights of natural-born British subjects in the various portions of the Empire there exist very important differences, and it appears that the recognition of a theroretical uniformity as regards naturalization through-

out the Empire, apart from differentiation on the ground of colour, will create more problems than it is likely to solve. The difficulty seems at present an insuperable one and raises the question whether the time is opportune for pressing legislation of this kind.

Lastly, Ministers beg to point out that the consolidation of most of the overseas Colonies into great Dominions has undoubtedly made this question of a uniform Imperial naturalization of less practical importance than it was formerly. In South Africa especially one uniform naturalization has now been substituted for the four different systems which obtained prior to the Union. Nor will the machinery proposed to be created under Section 26 of the Bill avail to give to persons naturalized in these great Dominions any recognition as such beyond the Dominion boundaries. For in Canada, Australia, and South Africa alike the required period of residence is either two or three years, and therefore falls short of the requirements of the Bill, and naturalization in these Dominions will consequently not avail in other portions of the Empire. South African law clearly recognizes naturalization in Great Britain, and the only possible effect of this section in South Africa will, therefore, be that persons naturalized in Crown Colonies will be able to obtain an Imperial naturalization availing in South Africa and in other portions of the Empire. This meagre result does not seem to justify the great trouble which the whole question is certain to involve.

In view of these difficulties, which Ministers have taken the liberty to point out and which affect the underlying principles of the Bill, Ministers venture to express the hope that an opportunity might be found at the forthcoming Imperial Conference to review the question as a whole before the discussion of details is proceeded with.

LOUIS BOTHA.

No. 5.

NEW ZEALAND.

The Governor to the Secretary of State.

(Received 27 March, 1911.)

SIR, WELLINGTON, 17th February, 1911.

I have the honour to transmit to you copy of a memorandum received from my Prime Minister, submitting observations respecting the report of the Inter-departmental Committee upon the draft of a Bill to consolidate and amend the enactments relating to naturalization, British nationality, and the status of aliens.

I have, &c.,
ISLINGTON,
Governor.

Enclosure in No. 5.

Memorandum for His Excellency the Governor.

The Prime Minister presents his compliments to His Excellency the Governor and begs to submit the following observations respecting the report of the Inter-Departmental Committee upon the draft of a Bill to consolidate and amend the enactments relating to naturalization, British nationalty, and the status of aliens, which report and draft Bill was forwarded with the despatch from the Secretary of State for the Colonies, No. 188, of 9th November, 1908, returned herewith.

With regard to the provisions of Clause 26 of the said draft Bill it is deemed advisable that some provision should be made whereby naturalizaton throughout the whole Empire should be obtainable in the British Possessions (Dominions and Colonies), but it is considered doubtful whether the provisions contained in that clause are the best that could be devised for the purpose. They are open to the objection that they render necessary the permanent continuance of a double system of naturalization, Imperial and Colonial. An applicant in the British Possessions for Imperial naturalization would first of all have to obtain Colonial naturalization, and then to make a separate application for Imperial naturalization, which, when obtained, would completely supersede the Colonial naturalization on which it was based. This seems to be a needless and inadvisable complication.

It is, therefore, suggested, for consideration as an alternative plan, that the naturalization provisions of the Imperial Bill should apply to the whole Empire subject to the following powers expressly conferred upon the various Colonial legislatures:—

(1) Power to provide the necessary machinery and procedure for bringing those provisions into operation in the Colony, *e.g.*, determining the Colonial officials by whom the powers of the Secretary of State are to be there exercised; establishing the necessary penal provisions; appointing fees; authorising regulations by the Governor in Council, &c.

(2) Power to impose further restrictions, limitation, and conditions on applications in the Colony for Imperial naturalization.

(3) Power, as at present, to provide for Colonial naturalization, granted on easier terms than Imperial naturalization, but without extra-territorial operation.

It is further suggested that all the provisions of the Imperial Bill which are intended to be of universal application through-

out the Empire should be collected in a separate part of the Bill, and that this part should be expressly declared to be so applicable.

J. G. WARD,
Prime Minister.

PRIME MINISTER'S OFFICE,
WELLINGTON,
15th February, 1911.

No. 6.

DRAFT BRITISH NATIONALITY AND STATUS OF ALIENS BILL.

ARRANGEMENT OF CLAUSES.

Natural-born British Subjects.

Naturalization of Aliens.

Clause.

National Status of Married Women and Infant Children.

Expatriation.

Status of Aliens in the United Kingdom.

Procedure and Evidence.

Supplemental.

A.D. 1911. DRAFT OF A BILL to consolidate and amend the Enactments relating to British Nationality and the Status of Aliens.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Natural-born British Subjects.

Defination of natural-born British subject.

1.—(1) The following persons shall be deemed to be natural-born British subjects, namely:—

(*a*) Any person born within His Majesty's allegiance; and

(*b*) Any person born out of His Majesty's allegiance, whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person to whom a certificate of naturalization had been granted; and

(*c*) Any person born on a British ship whether in foreign territorial waters or not:

Provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty, exercises jurisdiction over British subjects.

(2) A person born on a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth.

13 Geo. 3. c. 21.

(3) The British Nationality Act, 1772, which gives the status of a natural-born British subject under certain conditions to the grandchildren of natural-born British subjects born abroad, shall cease to have effect.

Naturalization of Aliens.

Certificate of naturalization.

2.—(1) The Secretary of State may grant a certificate of naturalization to an alien who makes an application for the purpose, and satisfies the Secretary of State—

(*a*) that he has either resided in His Majesty's dominions for a period of not less than five years in the manner required by this section, or been in the service of the Crown for not less than five years within the last eight years before the application; and

(*b*) that he is of good character and has an adequate knowledge of the English language; and

(*c*) that he intends if his application is granted either to reside in His Majesty's Dominions or to serve under the Crown.

(2) The residence required by this section is residence in the United Kingdom for not less than one year immediately preceding the application,, and, previous residence either in the United Kingdom or in some other part of His Majesty's Dominions, for a period of four years within the last eight years before the application.

(3) The grant of a certificate of naturalization to any such alien shall be in the absolute discretion of the Secretary of State, and he may, with or without assigning any reason, give or withhold the certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision.

(4) A certificate of naturalization shall not take effect until the applicant has taken the oath of allegiance.

(5) The Secretary of State may in any special case, if he thinks fit, grant a certificate of naturalization, although the four years' residence or five years' service has not been within the last eight years before the application.

Effect of certificate of naturalization. [33 Vict. c. 14. s. 7.]

3.—(1) A person to whom a certificate of naturalization is granted by a Secretary of State shall, subject to the provisions of this Act, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, duties, and liabilities to which a natural-born British subject is entitled or subject, and, as from the date of his naturalization, have to all intents and purposes the status of a natural-born British subject.

12 & 13 Will. 3, c. 2.

(2) Section three of the Act of Settlement (which disqualifies naturalized aliens from holding certain offices) shall have effect as if the words "naturalized or" were omitted therefrom.

Special certificate in case of doubt. [33 Vict. c. 14. s. 7.]

4. The Secretary of State may in his absolute discretion, in such cases as he thinks fit, grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in the certificate that the grant thereof is made for the purpose of quieting doubts as to the right of the person to be a British

subject, and the grant of a special certificate under this Act shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

Power of person to obtain certificate of naturalization under this Act, though previously naturalized. [33 Vict. c. 14. s. 7.]

5. An alien who has been naturalized before the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and the Secretary of State may grant to him a certificate on such terms and conditions as he may think fit.

Revocation of certificate of naturalization.

6.—(1) Where it appears to the Secretary of State that a certificate of naturalization granted by him has been obtained by false representations or fraud, the Secretary of State may by order revoke the certificate, and the order of revocation shall have effect from such date as the Secretary of State may direct.

(2) Where the Secretary of State revokes a certificate of naturalization he may order the certificate to be given up and cancelled, and any person refusing or neglecting to give up the certificate shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Power of Governments of British possessions to grant Imperial certificates of naturalization.

7.—(1) The Government of any British Possession shall have the same power to grant a certificate of naturalization as the Secretary of State has under this Act, and the provisions of this Act as to the grant and revocation of such a certificate shall apply accordingly, with the substitution of the Government of the Possession for the Secretary of State, and the possession for the United Kingdom, and also, in a Possession where any language is recognised as on an equality with the English language, with the substitution of the English language or that language for the English language: Provided that—

(*a*) This section shall not take effect in any of the Dominions specified in the First Schedule to this Act unless the legislature of that Dominion adopt the section; and

(*b*) In any British Possession other than British India and a Dominion specified in the First Schedule to this Act, the exercise of the power to grant a certificate shall be subject in each case to the approval of the Secretary of State, and any certificate proposed to be granted shall be submitted to him for his approval.

(2) Any certificate of naturalization granted under this section shall have the same effect as a certificate of naturalization granted by the Secretary of State under this Act in all parts of His Majesty's dominions other than a Dominion as

defined by this Act the legislature of which has not adopted this section.

Savings for powers of legislatures and governments of British possessions. [33 Vict. c. 14. s. 16.]

8.—(1) Nothing in this Act shall take away or abridge any power vested in or exercisable by the Legislature or Government of any British possession or prevent any such Legislature or Government from treating differently different classes of British subjects.

(2) All laws, statutes, and ordinances made by the legislature of a British possession for imparting to any person any of the privileges of naturalization to be enjoyed by him within the limits of that possession, shall within those limits have the authority of law, but subject to be confirmed or disallowed by His Majesty.

National Status of Married Women and Infant Children.

National Status of married women [33 Vict. c. 14. s. 10. (1)].

9. The wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien.

Status of widows [33 Vict. c. 14. s. 10 (2).]

10. A woman being a British subject, who by or in consequence of her marriage has become an alien, shall not, by reason only of the death of her husband, or the dissolution of her marriage, cease to be an alien, and a woman being an alien who by or in consequence of her marriage has become a British subject shall not, by reason only of the death of her husband or the dissolution of her marriage, cease to be a British subject.

Status of children.

11.—(1) Where an alien obtains a certificate of naturalization, the Secretary of State may, if he thinks fit, on the application of that alien, include in the certificate the name of any child of the alien born before the date of the certificate and being a minor, and that child shall thereupon, if not already a British subject, become a British subject; but any child so naturalized may, within one year after attaining his majority, make a declaration of alienage, and shall thereupon cease to be a British subject.

(2) Subject to the provisions of this section with respect to a widow who is a British subject marrying an alien, where a person being a British subject ceases to be a British subject, whether by declaration of alienage or otherwise, every child of that person, being a minor, shall thereupon cease to be a British subject whether he be resident with his father or not.

(3) Where a widow, who is a British subject, marries an alien, any child of hers, by her former husband shall not, by reason only of her marriage, cease to be a British subject, whether he is residing outside His Majesty's dominions or not.

(4) The Secretary of State may, in his absolute discretion in any special case in which he thinks fit, grant a certificate

of naturalization to any minor, although the conditions required by this Act have not been complied with.

(5) Except as provided by this section, a certificate of naturalization shall not be granted to any person under disability.

Expatriation.

Determination of British nationality by foreign naturalization. [33 Vict. c. 14. s. 6.]

12. A British subject who, when in any foreign state and not under disability by obtaining a certificate of naturalization or by any other voluntary and formal act becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject.

Declaration of alienage. [33 Vict. c. 14. s. 4.]

13.—(1) Any person who by reason of his having been born within His Majesty's allegiance is a natural-born British subject, but who at his birth or during his minority became under the law of any foreign state a subject also of that state, and is still such a subject, may, if of full age and not under disability, make a declaration of alienage, and on making the declaration shall cease to be a British subject.

(2) Any person who though born out of His Majesty's allegiance is a natural-born British subject may, if of full age and not under disability, make a declaration of alienage, and on making the declaration shall cease to be a British subject.

Power of naturalized subjects to divest themselves of their status in certain cases. [33 Vict. c. 14. s. 3.]

14. Where His Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state to whom certificates of naturalization have been granted may divest themselves of their status as such subjects, it shall be lawful for His Majesty, by Order in Council, to declare that the convention has been entered into by His Majesty; and from and after the date of the Order, any person having been originally a subject or citizen of the state therein referred to, who has been naturalized as a British subject, may, within the limit of time provided in the convention, make a declaration of alienage, and on his making the declaration he shall be regarded as an alien and as a subject of the state to which he originally belonged as aforesaid.

Saving of allegiance prior to expatriation. [33 Vict. c. 14. s. 15.]

15. Where any British subject ceases to be a British subject, he shall not thereby be discharged from any obligation, duty, or liability in respect of any act done before he ceased to be a British subject.

Status of Aliens in the United Kingdom.

Capacity of an alien as to property. [33 Vict. c. 14. s. 2.]

16. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects, as through, from, or in succession to a natural-born British subject: Provided that this section shall not operate so as to—

(1) Confer any right on an alien to hold real property situate out of the United Kingdom; or

(2) Qualify an alien for any office or for any municipal, parliamentary, or other franchise; or

(3) Qualify an alien to be the owner of a British ship; or

(4) Entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him; or

(5) Affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the twelfth day of May one thousand eight hundred and seventy, or in pursuance of any devolution by law on the death of any person dying before that day.

Trial of alien. [33 Vict. c. 14. s. 5.]

17. An alien shall be triable in the same manner as if he were a natural-born British subject.

Procedure and Evidence.

Regulations by Secretary of State. [33 Vict. c. 14. s. 11. 33 & 34 Vict. c. 102 s. 1.]

18.—(1) The Secretary of State may make regulations generally for carrying into effect the objects of this Act, and in particular with respect to the following matters:—

(*a*) The form and registration of certificates of naturalization granted by the Secretary of State:

(*b*) The form and registration of declarations of alienage:

(*c*) The registration by officers in the diplomatic or consular service of His Majesty of the births and deaths of British subjects born or dying out of His Majesty's dominions:

(*d*) The persons by whom the oath of allegiance may be administered, and the persons before whom declarations of alienage may be made:

(*e*) Whether or not oaths of allegiance are to be subscribed as well as taken, and the form in which the taking and subscription are to be attested:

(*f*) The registration of oaths of allegiance:

(*g*) The persons by whom certified copies of oaths of allegiance may be given; and the proof in any legal proceeding of any such oaths:

(*h*) The transmission to the United Kingdom, for the purpose of registration or safe keeping, or of being produced as evidence, of any declarations, certificates, or oaths made, granted, or taken out of the United Kingdom in pursuance of this Act or of any Act hereby repealed or of any copies thereof, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of this Act or any Act hereby repealed:

(*i*) With the consent of the Treasury the imposition and application of fees in respect of any registration authorised to be made by this Act or any Act hereby repealed, and in respect of the making of any declaration or the grant of any certificate authorised to be made or granted by this Act or any Act hereby repealed, and in respect of the administration or registration of any oath.

(2) Any regulation made by the Secretary of State in pursuance of this Act shall be of the same force as if it had been enacted herein, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such regulation may for the time being be in force.

(3) Any regulations made by the Secretary of State under any Act hereby repealed shall continue in force and be deemed to have been made under this Act.

Regulations as to evidence of declarations [33 Vict. c. 14. s. 12.]

19. Any declaration made under this Act, or under any Act hereby repealed, may be proved in any legal proceeding by the production of the original declaration or of any copy thereof certified to be a true copy by the Secretary of State, or by any person authorised by him in that behalf, and the production of the declaration or copy shall be evidence of the person therein named as declarant having made the declaration at the date therein mentioned.

Evidence of certificate of naturalization. [33 Vict. c. 14. s. 12.]

20. A certificate of naturalization may be proved in any legal proceedings by the production of the original certificate, or of any copy thereof certified to be a true copy by the Secretary of State, or by any person authorised by him in that behalf.

Entries in registers. [33 Vict. c. 14. s. 12.]

21. Entries in any register made in pursuance of this Act, or under any Act hereby repealed, shall be proved by such copies and certified in such manner as may be directed by the Secretary of State, and the copies of any such entries shall be evidence of any matters by this Act or by any Act hereby repealed, or by any regulation of the Secretary of State, authorised to be inserted in the register.

Penalty for false representation or statement.

22. If any person for any of the purposes of this Act knowingly makes any false representation or any statement false in a material particular, he shall be liable on summary conviction in respect of each offence to imprisonment with or without hard labour for any term not exceeding three months.

Form of oath of allegiance. [33 Vict. c. 14. s. 9.]

23. The oath of allegiance shall be in the form set out in the Second Schedule to this Act.

Supplemental.

Saving for letters of denization. [33 Vict. c. 14. s. 13.]

24. Nothing in this Act shall affect the grant of letters of denization by His Majesty.

25. In this Act, unless the context otherwise requires— Definitions. [33 Vict. c. 14. s. 17.]

The expression "alien" means a person who is not a British subject:

The expression "certificate of naturalization" means certificate of naturalization granted under this Act or under any Act repealed by this Act:

The expression "disability" means the status of being a married woman, or an infant, lunatic, or idiot:

The expression "territorial waters" includes any port, harbour, or dock.

26.—(1) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule. Repeal and short title. [33 Vict. c. 14. s. 1.]

(2) This Act may be cited as the British Nationality and Status of Aliens Act, 1911.

SCHEDULES.

First Schedule.

List of Dominions.

The Dominion of Canada.
The Commonwealth of Australia.
The Dominion of New Zealand.
The Union of South Africa.
Newfoundland.

Second Schedule.

Oath of Allegiance.

"I, *A.B.*, swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King George the Fifth, his Heirs and Successors, according to law. So help me GOD."

Third Schedule.

Enactments Repealed.

Session and Chapter.	Title or short Title.	Extent of Repeal.
25 Edw. 3 stat. 1....	Statute for those who are born in parts beyond the seas.	From "and in the right of other children" to the end of the statute.
12 & 13 Will. 3. c. 2.	The Act of Settlement.....	In section three the words "naturalised or."
7 Anne c. 5.....	The Foreign Protestants (Naturalization) Act, 1708.	The whole Act.
4 Geo. 2. c. 21. ...	The British Nationality Act, 1730.	The whole Act.
13 Geo. 3, c. 21.	The British Nationality Act, 1772.	The whole Act.
33 Vict. c. 14.....	The Naturalization Act, 1870.	The whole Act.
33 & 34 Vict. c. 102..	The Naturalization Oath Act, 1870.	The whole Act.
58 & 59 Vict. c. 43...	The Naturalization Act, 1895.	The whole Act.

EIGHTH DAY.

(Tuesday, 13th June, 1911.)

THE IMPERIAL CONFERENCE MET AT THE FOREIGN OFFICE AT 11 A.M.

PRESIDENT.

The Right Honourable L. HARCOURT, M.P., Secretary of State for the Colonies (in the chair).

The Right Honourable WINSTON S. CHURCHILL, M.P., Home Secretary.

Sir JOHN SIMON, K.C., M.P., Solicitor-General.

Canada—

The Right Honourable Sir WILFRID LAURIER, G.C.M.G., Prime Minister of the Dominion.

The Honourable Sir F. W. BORDEN, K.C.M.G., Minister of Militia and Defence.

The Honourable L. P. BRODEUR, K.C., Minister of Marine and Fisheries.

Australia—

The Honourable A. FISHER, Prime Minister of the Commonwealth.

The Honourable E. L. BATCHELOR, Minister of External Affairs.

New Zealand—

The Right Honourable Sir J. G. WARD, K.C.M.G., Prime Minister.

The Honourable J. G. FINDLAY, K.C., LL.D., Attorney-General and Colonial Secretary.

Union of South Africa—

General The Right Honourable LOUIS BOTHA, Prime Minister.

The Honourable F. S. MALAN, Minister of Education.

The Honourable Sir DAVID DE VILLIERS GRAAFF, Bart., Minister of Public Works, Posts, and Telegraphs.

Mr. H. W. JUST, C.B., C.M.G., Secretary to the Conference.

Mr. W. A. ROBINSON, Senior Assistant Secretary.

Mr. A. B. KEITH, D.C.L., Junior Assistant Secretary.

THERE WERE ALSO PRESENT:

LORD LUCAS, Parliamentary Under Secretary of State for the Colonies;

Sir Francis Hopwood, G.C.M.G., K.C.B., Permanent Under Secretary of State for the Colonies;

Sir C. P. Lucas, K.C.M.G., C.B., Assistant Under Secretary of State for the Colonies;

Mr. J. S. Risley, Legal Adviser, Colonial Office;

Sir C. E. Troup, K.C.B., Permanent Secretary to the Home Office;

Mr. J. Pedder, Home Office;

Mr. Atlee A. Hunt, C.M.G., Secretary to the Department of External Affairs, Commonwealth of Australia; and

Private Secretaries to Members of the Conference.

Naturalization.

Australia—

"That this Conference is in favour of the creation of a system which, while not limiting the right of a Dominion to legislate with regard to local naturalization, will permit the issue to persons fulfilling prescribed conditions of certificates of naturalization effective throughout the Empire, and refers to a subsidiary Conference the question of the best means to attain this end."

New Zealand—

"That it is in the best interests of the Empire that there should be more uniformity throughout its centres and dependencies in the law of naturalization."

Union of South Africa—

"That it is desirable to review the principles underlying the draft Bill for Imperial Naturalization before its details are discussed further.

Mr. Batchelor: I move the Australian resolution: "That this Conference is in favour of the creation of a system which, while not limiting the right of a Dominion to legislate with regard to local naturalization, will permit the issue to persons fulfilling prescribed conditions of certificates of naturalization effective throughout the Empire, and refers to a subsidiary conference the question of the best means to attain this end." The resolution that was passed at the last Conference affirmed the desirability of uniformity of naturalization as far as practicable, and decided that an inquiry should be held to consider the question further. The idea, I think, was that there should be some subsidiary conference later on, and that the details should then be determined on the drafting of an Imperial Bill. I do not mean to go into the history of this matter, because, of course, it is all within the knowlege of every members of the Conference equally with myself.

An attempt has been made by the Home Office in the preparation of a Bill which was sent round to all the Dominions, and

replies and suggestions were, I think, received from all the Dominions, and they show very great difference and much divergence of practice as regards naturalization throughout the Dominions. What we particularly desire, and that is the Australian view which our Cabinet have decided upon, is that there should be certain things that we must lay down to begin with as regards naturalization; that is to say, every self-governing Dominion must determine for itself whom it admits to its citizenship. We begin with that, and any kind of attempt to influence or direct any of the Dominions as to whom they shall admit to local naturalization is no part of this Conference, but the question is solely for the individual State. Nothing could be done in the direction of Imperial naturalization except by the Parliaments of the Dominions themselves; and we should not seek to bring about Imperial naturalization by an Imperial law, but whatever is done should be done directly by the Parliaments of the Dominions concerned. Thirdly, we must recognise the divergence of the law in the various States; we must make no attempt to bring about uniformity of the law in naturalization so far as local naturalization in any particular Dominion is concerned.

We find that there are some considerable differences in the conditions under which naturalization is effected in the various Dominions. The conditions usually laid down are that there shall be a certain length of residence which runs from five years, I think, in the United Kngdom to two years in the case of Australia.

Dr. FINDLAY: There is no limit at all in New Zealand.

Mr. BATCHELOR: No limit at all. Thus it runs from five years down to nothing in the case of length of residence. Other conditions are payment of fees—from about 5*l.* in the United Kingdom, running to nothing in Australia, where there is no fee at all charged. Then there is evidence required of good character, and that varies. The United Kingdom requires the evidence of four reputable persons. In the case of Australia we require the evidence of some official—the written evidence of some person in an official position. Then there is the very great difference in the law of naturalization regarding the races that may be naturalized. For instance, in Australia and New Zealand, and I am not quite sure about Canada for the moment, Asiatics may not be naturalized under any conditions. There are also educational conditions laid down. Those are the principal ones.

Now it occurs to us, and I put it to the Conference, that there are a great many people—many thousands perhaps—in every Dominion of the Empire who can comply with all the conditions, the most severe conditions, and the point is whether it would not be worth while to give certificates of naturalization to those persons who can comply with any standard that may be set up. Supposing we have a standard of Imperial naturaliza-

tion which covers the most drastic conditions —if I may use the word "drastic"—not of each, but of the whole of the Dominions, any Dominion then could give not only local naturalization, but could grant, so long as the conditions of this Imperial standard which might be set up are complied with, a certificate of Imperial naturalization; every one of the Dominions could do that. That appears to us a way in which we could bring about the advantages of Imperial naturalization without having any difficulties at all about the complete local autonomy, the complete right of every part of the Dominions to determine whom it shall admit into its own country. It does not raise the question of Asiatic exclusion; it does not touch the question of the payment of fees, or any of the other conditions. We do not ask any one of the Dominions to vary its law in any degree at all, but each Dominion should carry legislation authorizing, recognising, or acknowledging the holders of Imperial certificates to the full advantage of naturalization in their communities. I do not know whether I have made myself quite clear as to what we propose, but we think that there are some very manifest advantages in having naturalization which will run right through the Empire, so that persons going anywhere having been naturalized and having complied with the Imperial conditions need not be naturalized further. Once admitted to Imperial naturalization that naturalization continues, and wherever they go they are subjects of the British Empire.

In Australia and New Zealand, of course, this matter arises pretty frequently. People go across from Australia to New Zealand very readily, and it is rather absurd that they should have to take out fresh naturalization certificates in each place. Being naturalized in Australia does not mean being naturalized in New Zealand, where the conditions are practically the same, and at present there is no means by which we can grant any naturalization that will apply in New Zealand, nor can they in New Zealand grant anything that applies in Australia. I should think the same thing would apply to Canada and Newfoundland. Then, of course, from all the Dominions people come very extensively to the United Kingdom.

The advantages of an Imperial certificate are so obvious that there is no need to discuss the matter at length, but I think what I have suggested is a practical method by which our aim can be carried out, and at the same time do away with any of the disadvantages which have been shown would occur if there was any attempt to have one uniform naturalization law passed either by all the Dominions separately or imposed by the Imperial Parliament. Anything of that kind would lead to some difficulties, and, so far as we can see, there would be no difficulty, and yet all the practical advantages will be brought about by the issue within the Dominions and the United Kingdom of Imperial certificates of naturalization which will be

certificates showing that the conditions of the standard, which we could set up very readily, have been complied with. There would be no need, I think, to have a subsidiary conference, as suggested in our resolution, because it would be very easy to compile from the laws at present in force a standard which could be used as an Imperial standard.

Mr. Malan: Just for the purpose of information, supposing in Canada a man applies under the local naturalization law, and his application is refused, would he then have a right to apply for the Imperial naturalization certificate, and in that way defeat the local administration?

Mr. Batchelor: Certainly not; I do not see how that point could arise.

Mr. Malan: But if you have two standards and two authorities issuing letters of naturalization, how would you avoid that difficulty?

Mr. Batchelor: The greater will always include the less. The certificate of naturalization could not be, and ought not to be, granted unless it complies with the conditions in every one of the Dominions. It must cover the most severe conditions which are laid down by any of the Dominions.

Mr. Malan: Yes; but supposing, now, an application is refused on the point of character—the local authorities go into the record of the applicant, and they refuse—and this same man applies in another part of the Empire for Imperial naturalization, and they go into his character and they grant a certificate, then this same man comes to South Africa and laughs in our faces.

Mr. Batchelor: But would not that be a difficulty which in practice could scarcely occur, because it would be required that a man should qualify for five years. Supposing the qualification is five years, he would have to go and reside in that other territory for at least five years in order to get his certificate. It seems to me that, as a matter of practice, would knock out the difficulty.

Mr. Malan: Your term of five years would be five years in any part of the Empire.

Mr. Batchelor: No, not necessarily.

Mr. Malan: Then I do not follow what you propose.

Sir Wilfrid Laurier: This is, in my estimation, one of the important questions that the Conference has to deal with. I sympathize in the views expressed by Mr. Batchelor, and I would be prepared to support the resolution which he has moved, although, if he will permit me to say so, before reaching a final conclusion it may perhaps be possible to frame the resolution in more apt language with a view to reaching the object which we desire.

The power of naturalization is one of the incidental powers of sovereignty, and one of the most important attributes of sovereignty. The British Government in granting the constitutions of several Dominions has parted with this power of sovereignty and delegated it to the Dominions. It has given the power to all the Dominions of granting letters of naturalization to aliens. That was one of the necessary incidents, I think, of the power of self-government which was given to the Dominions, and the one power which it was very important for them to have, because, being young nations and all inviting immigration, it followed as a measure of practical moment that they should have the power to grant letters of naturalization. They have all availed themselves of that power, and each one has its own law of naturalization, and those laws are all different, as Mr. Batchelor has said. I do not think there are two laws in all the Dominions which are here represented which are the same—they all vary.

The practical difficulty which arises at once is, as to what is to be the effect of this power of naturalization. The power which is given to Canada, to New Zealand, and to all the self-governing Dominions, is one which is limited each to its own territory. It does not extend beyond the limits of the territory covered by that legislation. If a man from Denmark, or Switzerland, or Sweden, or Norway comes to Canada, and conforms to our laws of naturalization, he becomes a British subject *quoad* Canada alone. He is a British subject so long as he remains in Canada; but the moment that same man goes out of the territory of Canada, if he comes from Denmark he remains a Dane, and if he comes from Sweden he is a Swede. So he has a divided allegiance; he is a British subject in Canada if naturalized in Canada and he is a British subject in Australia if he is naturalized in Australia, and so on, but he remains a citizen of his native country the moment he is out of the Dominion of his naturalization. For instance, if a Canadian to-day comes to Great Britain, and he was a native of the United States and has become a British subject in Canada, in Great Britain he is not recognised as a British subject. Therefore, here is a difficulty at once which is of the greatest possible moment.

In Canada, where we receive annually at the present time some 100,000 American citizens who generally take out letters of naturalization as soon as it is possible for them to do so, we are in this condition: those 100,000 American citizens are British subjects in Canada, but if they come to Great Britain they are still American citizens. In these days of travel and locomotion it is conceivable that this condition of things—this divided allegiance—may produce serious complications. Therefore, I think the first consequence to be deduced from this condition of things, this divided power of legislation between the Mother Country and the Dominions beyond the seas, must be remedied in some way, and I think this principle may be

laid down as an object to be ultimately reached—a British subject anywhere, a British subject everywhere. The Imperial Government has naturally retained to itself the power to grant letters of naturalization, and I understand that jurists are of opinion that letters of naturalization issued here in Great Britain under the authority of British legislation carry their effect not only in Great Britain, but in Canada, in Australia, in all the oversea Dominions and everywhere. That is to say, letters of naturalization granted here in England make a man a British subject all over the world, whereas the letters of naturalization granted by the authority of the Dominions beyond the seas are restricted only to their own respective territories. I say that this legislation at once ought to be remedied in some way, and a measure ought to be adopted whereby it should be universal that, if a man is made a British subject somewhere in the British Empire under authority delegated by this Parliament of Great Britain, then legislation to that effect should carry the power of naturalization not only in the country in which naturalization has been granted, but all over the British Empire, or, indeed, all over the world. In other words, *civis Britannicus* is *civis Britannicus* not only in the country of naturalization, but everywhere. This principle, it seems to me, is the one which ought to be reached and ought to be adopted; otherwise we are liable to very serious complications. Therefore I say that we should have uniformity in the effect of naturalization, and the principle should be adopted that whenever a man is naturalized, whether it be in the United Kingdom or in any one of the Dominions which derive their authority from the Parliament of Great Britain, the effect should be the same, and that man should be *civis Britannicus* all over the world.

Now, as to the method of obtaining naturalization, I agree with Mr. Batchelor that it would be extremely difficult to have the same methods adopted in every country. The circumstances vary very much; nothing shows that better than the variety of legislation which we have upon this subject. In Great Britain the period of probation before an alien can become a British subject is five years; in my country it is three years; in Australia it is two years, and in New Zealand I understood it is no period at all—a man can arrive one day and be naturalized the following day. That shows that the local conditions vary so much that uniform legislation is hardly to be attained. I see no objection for my part at all to this varied legislation; let every Dominion for itself determine what is the period of probation which it will subject an alien to before it makes him a British subject. I see no reason at all why the conditions should not vary as they do now. If we adopt these two principles, that is to say uniformity in effect but diversity of methods, I think we reach the solution we are seeking to obtain. That is the policy which I would submit to the Conference. If these two principles are recognized and adopted I think we

have found an easy solution of a very serious problem and one which has given us a good deal of trouble hitherto.

Sir JOSEPH WARD: I do not see any objection to the Imperial Parliament legislating in connection with naturalization for application throughout the Empire, and I think it is necessary that it should be done, with certain reservations. In our country the course that we follow is that there is no time limit; if a man has the necessary education, and his character is all right, a certificate is furnished by a magistrate, and we may naturalize him within a month after he comes to our country. On the other hand we have people in New Zealand to-day who have been there 20 years whom we would not naturalize, because they cannot comply with the requirements as to citizenship of our country, and therefore they are refused.

The CHAIRMAN: Is that an educational test?

Sir JOSEPH WARD: Yes, an educational test and a character test. If reservations are provided in the proposed Imperial Bill, which would be submitted for the consideration of the respective Governments, to enable us to exercise certain powers within our own territory, I fail to see any reason why we should not have uniformity right throughout the British Empire dealing with naturalization. I am inclined to think that Sir Wilfrid Laurier was probably not quite right in stating that where naturalization was conferred upon a British subject he was then *civis Britannicus* all over the world. As a matter of fact there are Continental countries that will not accept the naturalization of a British subject here if the naturalized person be of their nationality, so that it does not apply in the way in which it was suggested.

Sir WILFRID LAURIER: I do not understand that.

Sir JOSEPH WARD: There are cases where a man is naturalized in Great Britain, but his naturalization is not accepted all over the world—in some Continental countries it is not accepted.

Sir WILFRID LAURIER: That is a different matter altogether. That depends upon foreign interpretation, and not upon what concerns us here.

Sir JOSEPH WARD: So far as we are concerned, in New Zealand, we would not accept it either.

Sir WILFRID LAURIER: You would not accept the naturalization of a man in Canada, for instance?

Sir JOSEPH WARD: I am not prepared to say that if he be Canadian born.

Sir WILFRID LAURIER: That is what I mean.

Sir JOSEPH WARD: If he were a foreigner to Canada, whom you naturalized, and he came to New Zealand, we would not accept your naturalization. We would require him to commence *de novo* and comply with our conditions.

Sir WILFRID LAURIER: That is a different condition of things.

Sir JOSEPH WARD: I think, to some extent, we ought to be able to meet in a general way the position in order to enable cases of that kind to be dealt with. In dealing with this matter I want to make a suggestion to Mr. Churchill, the head of the Department here. The Bill which was sent out for the consideration of the Government of New Zealand made provision for two distinct things separately: The acquisition and the loss of British citizenship otherwise than by naturalization, and the status of aliens and the naturalization of aliens. What I suggest is that the provisions of the Imperial Bill regarding naturalization, which are intended to be of universal application, should be collected in one part of the Bill and expressly declared to be applicable. If that is done I am quite certain that no reasonable objection could be offered, so far as New Zealand is concerned, to the exercise of power by the Imperial Legislature in defining for the whole Empire the conditions of British citizenship, and it would be a step in the right direction; but what we would require to have in that Bill, in my opinion, would be power to provide the necessary machinery for bringing those provisions into operation in the Dominions and Colonies and determining the Colonial officials by whom the powers of the Secretary of State are to be there exercised, and power to establish the necessary penal provisions, appointing the fees, and authorising regulations by the Governor in Council; and there should be power provided to impose further restrictions, limitations, and conditions on application in the Dominion for Imperial naturalization. The powers at present provide for Colonial naturalization to be granted on easier terms than Imperial naturalization, but without extra-territorial operation. That is the law now on that particular point.

Now if what I suggest is done, I see no reason whatever, speaking from the New Zealand standpoint, for our being opposed to the general proposals of the Imperial Government, because, after all, we still can exercise the power of the exclusion of aliens under another Act, and so long as we hold that power there does not appear to me to be any reason why we should not in a general way support a proposal to have uniformity; but I do think it important that the two matters in the proposed Bill should be kept apart—there ought to be no difficulty about that, so far as draftsmanship is concerned—in order that certain parts of the Bill may be applicable by Order in Council in our country if it seems to us desirable to do it.

The CHAIRMAN: You have more than the power of exclusion of aliens left to you; you have the power of exclusion of British subjects, if of a particular colour or a particular race.

Sir JOSEPH WARD: That is so, so we are perfectly safe in that particular respect.

Mr. CHURCHILL: Or any other conditions you may choose to make at any time by your law.

Sir JOSEPH WARD: That is so. In our country we would not naturalize Asiatics, that is quite certain; we have power to deal with their coming to the Dominion under other Acts of Parliament. If in the ordinary course of things Chinese happen to be naturalized in this country and wanted to come to our country, it is beyond all question we would refuse assent; but I see no reason why there should not be an interchange, as suggested in the course of Sir Wilfrid Laurier's speech, to enable us under proper conditions to allow a Canadian to come to our country when naturalized so that that naturalization would not require re-affirming in New Zealand. I think the anomaly mentioned by Sir Wilfrid Laurier, where an American comes to Canada and is a Canadian citizen while he is there and is naturalized there, and then comes on to England, and when he is in England he is not a Canadian but is an American subject, ought to be removed, because once a man becomes a British subject when he comes to Canada, surely he ought to continue to be a British subject when he comes to England, and I am prepared to support general legislation to enable such an undesirable anomaly as the one referred to to be stopped.

Mr. MALAN: I may at once say that in general we agree with the view expressed by Sir Wilfrid Laurier. The practical difficulty of setting up two standards seems to me to be insurmountable. If you have in the same country two sets of certificates of naturalization running, issued by two authorities, as is proposed in the Draft Bill, one set issued by the local Government and one set issued under the Imperial Act by the Governor-General, it seems to me you are let into a maze of practical difficulties which you can never overcome. Therefore, I think, that as far as the present Bill, which has been circulated, is concerned, we could never support that. Sir Wilfrid Laurier laid down two clear principles. The first one was uniformity of effect. If he means by that that the same rights which attach to a British subject in the country of naturalization should also, as of right, be granted in every other part of the Empire to that naturalized British subject, I think his proposition goes too far. But if he sticks to what he first said —a British subject anywhere, British subject everywhere in the Empire— then, I think, he expresses the principle correctly.

Sir JOSEPH WARD: Would you apply that to Chinese?

Mr. MALAN: Yes. A British subject anywhere in the Empire is a British subject everywhere in the Empire, but you do not necessarily give him all the rights of a British subject in all parts of the Empire. For instance, a man may be a British subject in South Africa and not a registered voter at all.

General Botha: That is the present condition.

The Chairman: Or not be admitted to the country.

Mr. Malan: Yes; I am speaking now first about the point of citizenship. He is a British subject, but if he is not 21, for one thing, then he is not a registered voter, or if he does not satisfy the qualifications required by the country he is not a registered voter. In the Cape Province, for instance, there is a property qualification. In Natal it is the same. In the Transvaal and the Free State, where they have manhood suffrage, it is for Europeans only. So the coloured British subjects in the Transvaal and the Free State have not a right to go on to the register. In the Cape Colony they say he has to satisfy their local law as regards registration before he can become a registered voter. If, therefore, a man becomes a British subject in England and he has the right to be on the register, I do not want to say *ipso facto* when he comes to South Africa he has a right of coming on to the register also. But if he has certain general rights as a British subject when he is naturalized here—that he will be under the British Flag and have the protection of the British Flag—then wherever he goes within the Empire that should be maintained.

The second principle laid down by Sir Wilfrid Laurier was diversity of method, that is to say, we must leave to each individual self-governing part of the Empire the right to say under what conditions they will create British subjects. If you do not concede this, or if you override this principle by an Imperial Act, you will have very serious practical difficulties, and you will have the most serious constitutional difficulties. The practical difficulty will be that, supposing you decide to pass the Act, who must pass it? If you ask the Imperial Parliament to pass it for the whole of the Empire and so override the local legislatures you will create difficulties. If you ask the local legislatures to pass a similar law you have this difficulty, that you cannot force the actual *ipsissima verba* Act through the local Parliaments. They must have the right to amend that Act, and as soon as you begin to amend a statute of that kind diversities will at once appear again. Then there is this difficulty afterwards: How are you going to alter this law? Supposing it is found that the law is not perfect and it has to be altered, you have no legislative power for the whole of the Empire by which you could satisfactorily deal with a question of that kind. Then you have the constitutional difficulty. The self-governing countries say: "We do not want to be overridden in our legislature by any other legislature in the world." But if you concede this principle of diversity of method then it will apply to 99 per cent. of the British subjects that are created in the different Colonies, and the difficulty, if it is a difficulty at all, would only be as regards a few men who go from the one country to the other.

I would then say "British subject anywhere, British subject everywhere," but subject to local laws. I have spoken about the registration of voters, and the qualification of men as voters. There is also the question of emigration. Being a British subject does not necessarily open the door to that British subject in any part of the Empire, and that principle of a Dominion, or any part of a Dominion, having the right to say what shall be the composition of its population is a principle which I think South Africa will maintain to the last. Provided that it is clearly understood, and clearly expressed, that "British subject anywhere, British subject everywhere" means subject to the local laws which obtain as regards the rights of British subjects whether of citizenship or of admittance into a country, we think that the principles as laid down by Sir Wilfrid Laurier are correct and sound ones.

Mr. CHURCHILL: Gentlemen, I think the statements of opinions which have already been made to the Conference reveal the very great possibility of agreement being reached upon this subject, and they also reveal the great importance of the question. Sir Wilfrid Laurier referred to the fact that 100,000 emigrants enter Canada every year, the greater part of whom seek certificates of naturalization at the earliest moment, and that this great body of persons, rapidly increasing in numbers, are in a wholly anomalous position outside Canada, whether they go to other parts of the British Empire or to the Mother country, or go into foreign countries. This must, I am sure, bring to the Conference a realization of the importance and the significance which this question has already attained. There is no doubt that the importance of the question of uniformity in naturalization is going to grow; it grows with every development in the wealth and prosperity of the dominions, with every improvement in locomotion, with every extension of the affairs of persons resident in the dominions to all parts of the world. Therefore, I welcome with the greatest satisfaction the strong statement made by every one of the representatives of the dominions present here to-day in favour of the desirability of securing a uniform and world-wide status of British citizenship which shall protect the holder of that certificate wherever he may be, whether he be within the British Empire or in foreign countries.

Now I do not think I need dwell on the inconveniences of the present system. To the Dominions they are much greater than they are to the Mother Country, because as a matter of fact at the present time the Dominions do as a matter of courtesy, or even as a matter of right under local statutes, accept as current our naturalization certificates issued in this country, though we are unable at present (except as a matter of courtesy solely) to recognise theirs. Of course the intercolonial question is quite unsettled, and, as Sir Joseph Ward and Mr. Batchelor have pointed out, the close

proximity of Australia to New Zealand, where there are exactly similar conditions, has not prevented a complete absence of arrangement for mutual naturalization between the two countries. It would be a great thing if we could remedy these inconveniences, but we shall not remedy the inconveniences of the present system if we depart from sound principles of Colonial and Imperial Government. We must base ourselves, in any legislation which we seek upon this subject, upon the two main principles, as I understand them, of the government of the British Empire. First of all, we must base ourselves upon the assents of local Parliaments; and secondly, upon the responsibility of Ministers. As long as we stand on those two foundations I do not think that any real difficulties will arise in practice.

Now the draft Bill which has been circulated and has been examined and studied in all the Dominions must not be regarded as by any means a final or a perfect scheme. I think the very valuable criticisms which have been made upon it, not only this morning but in the despatches which have been written, particularly the South African Despatch, have shown that that Bill can only be regarded as a convenient peg upon which to hang the discussion of this subject, and we are not committed to it in form or in detail at all this morning, as far as the Imperial Government is concerned. It is a method, and I think it has proved to be not an inconvenient method, of raising the question. I am bound to say I have found the criticisms which have been advanced by the different self-governing Dominions upon that Bill very valid and important, and I agree very much with them.

I certainly feel, and I am sure my Right Honourable friend, the President of the Conference, agrees with me, that no Imperial Act ought on this subject to deal with the self-governing Colonies, unless and except in so far as it is adopted by their Parliaments. We feel very strongly that, in regard to a question like naturalization, the Government of that Dominion where the certificate of naturalization is applied for must be the judge and the complete judge. We have no desire at all that the Secretary of State for the Home Department should have the power to reach out, as it were, into the self-governing area of the South African Union or the Dominion of Canada and confer naturalization—I think that perhaps was in Mr. Malan's mind—on persons who had been refused naturalization there. We have no idea of that kind of reaching out into a self-governing area; nor have we any idea of overriding local law. That is a matter of the very greatest importance. A certificate of naturalization does not entitle the naturalized person to any treatment in this country or in any Dominion of the British Empire, except as may be prescribed by the laws of this country or of the Dominions in question. We draw distinctions in this country between different classes of white British subjects. We do not, for

instance, put peers on the register for voting; and there are many distinctions which you draw in the Colonies. Nothing in the proposal we put forward to-day is intended to touch or affect the local law as regards immigration, that is to say, the exclusion of aliens or even natural-born British subjects, which the Colonies strongly hold to in some cases, and I think very reasonably in some cases; and nothing would affect any differentiation which may be in force by local law within the area of any self-governing Colony. I feel that we have to recognise all those facts if we are to make any advance in this field.

Then I come to the second step. There is a great diversity in the conditions of naturalization in the self-governing Dominions, and I do not see how we, sitting round this table, could come to an agreement to establish uniform Imperial conditions of naturalization. I do not think we could. The circumstances of the different Dominions are so varied, and the time and labour of the work, even if it were a possibility, would be so great that we should not reach any practical conclusion, and if we did reach a practical conclusion the whole matter would then have to be delayed until the different uniform Bills enforcing the uniform principle had been carried through by the Parliaments all over the British Empire. I do not think that there can be any progress along that road. So I am forced to the conclusion, after considering very carefully the objections which have been taken to the draft Bill, and having the advantage of discussing this matter with the learned Solicitor-General, who is here this morning, that if we are to give effect to the resolution proposed by Mr. Batchelor and to the wishes which Sir Wilfrid Laurier has expressed we shall have to face two standards of naturalization; there will have to be the local law and there will have to be an Imperial standard.

I see Mr. Malan smile, but I think I can meet the difficulty which he has in his mind. For our part in this country we cannot depart from the five years' limit as a qualifying period. We are in very close proximity to Europe, and great numbers of persons come through this country and come into this country, and with every alteration in our social legislation there is a greater incentive to acquire British citizenship in this country and we feel it is absolutely necessary for our good government to insist upon a five years' period. But that five years' period, if insisted upon by this Mother Country, will not be any inconvenience to the Dominions; on the contrary it will be a protection to them against persons being naturalized in this country and then becoming British subjects for the purposes of the different Dominions, because it will prevent such persons getting in under standards which might be less severe than those the Dominions have thought it necessary to establish for their own protection.

What I would therefore suggest is this—if I may make a tentative suggestion to the Conference—that it should be open to any person who has obtained a certificate of local naturalization in any of the Dominions, and who, in addition to that local certificate of naturalization, has resided five years in any part of the British Empire, to apply for a certificate of Imperial naturalization. He would apply, of course, to the responsible Ministers of the Dominion or State in which he was resident, and if the responsible Ministers endorse his application, the Government, upon advice in the ordinary manner, would issue the certificate. In that way it would be possible to allow all the existing diversities of Dominion legislation to continue untouched. There would be no need to alter all those laws, although it is very possible that there would be a gradual tendency to assimilate them, but that would be a matter which time and circumstances, and the opinions of the Dominions concerned, would solve in their own way. There would be no necessity at all to alter the existing diversity of practice. I think in the great majority of cases persons would be quite content to remain in the enjoyment of the local naturalization, but if they wished to go further, in two years later in the case of Canada, or three years later in the case of Australia, they could, by application to the Government, or under any other condition that the Government of the Dominion might prescribe, take out papers of Imperial naturalization, and those papers of Imperial naturalization based, as they would be, not only upon the local citizenship, but also upon the five years' qualification, ought to be current throughout the British Empire. Of course there is just one loophole of difficulty, to which Mr. Malan has referred, and which does not appear to be completely met; that is, supposing a man applies in South Africa for naturalization and is refused, and then goes away, say to Canada, and lives there for a period, then gets Imperial naturalization, and then and there comes back to South Africa, he will have acquired an Imperial naturalization certificate current in South Africa, although he had previously been refused that certificate by the Government of that dominion. I think we are having to go a good long way round to get to the difficulty exemplified in that case. Such cases would be extremely rare, but I can only say in answer to that, that the local law would not be affected at all, and if it really were thought to be such a serious danger that this should happen, I do not see any reason why, if it were thought worth while to do it, the Government of the Dominion which did not wish to have this man should not by legislation arrange that the Imperial certificate should be in abeyance in cases where an application had previously been refused to the same person within their own bounds. I do not think the danger is a real one, but it would be quite possible to safeguard local autonomy completely against it.

Mr. BATCHELOR: Could not you do this—require a declaration from each applicant for an Imperial certificate that he had not applied and been refused a certificate? That would seem to get over the difficulty.

Mr. CHURCHILL: I am afraid it would not. We could not guarantee we should not naturalize any person here who had been refused naturalization elsewhere.

Mr. BATCHELOR: No, but you would not give him an Imperial certificate.

Mr. CHURCHILL: We do now—a world-wide certificate.

Dr. FINDLAY: We have a second resolution down, although, I take it, it is embraced within the present discussion. I have not said anything about this matter, but I hope if the matter is not being treated independently to say one word now.

Mr. CHURCHILL: I have practically finished what I have to say, and I will just summarise my points in five propositions: (1) Imperial nationality should be world-wide and uniform, each Dominion being left free to grant local nationality on such terms as its Legislature thinks fit. (2) The Mother Country finds it necessary to maintain the five years. This is a safeguard to the Dominion as well as to us; but five years anywhere in the Empire should be as good as five years in the United Kingdom. (3) The grant of nationality is in every case discretionary and this discretion should be exercised by those responsible in the area in which the applicant has spent the last 12 months. (4) The Imperial Act would not apply to the self-governing Dominions until adopted by them. (5) Nothing now proposed would affect the validity nnd effectiveness of local laws regulating immigration and the like, or differentiating between classes of British subjects. Those are the general principles and the main principles which I think would have to underlie any legislation we may endeavour to put forward on this subject, and I would express a hope that the Conference, if it felt itself in general agreement with those general principles, which are not at all unhappily expressed by the resolution which Mr. Batchelor has moved, would allow us to redraft the Bill in conformity with those principles which are laid down, and submit it to a subsidiary conference in the shortest possible time. I do not think it would take very long. That is what I should hope might follow from our discussion.

The CHAIRMAN: I would like to make this point to Mr. Malan. He supposed the extraordinary case of a man failing to get naturalization in South Africa, but coming to Canada, or coming here, in order to get naturalization. That man is in no better position after he has acquired that naturalization than thousands of British-born subjects to-day, either Indians born in India or Chinamen born in Hong Kong. The fact that he has acquired elsewhere naturalization, which has been refused

to him at the Cape, does not entitle him on his return to South Africa to any rights from which he is excluded by your other laws laying down exclusive regulations as to colour or any other bar you may choose to impose, so that he really gains nothing by that process except British nationality, which he may have been born with, and yet be an excluded person in South Africa.

Mr. MALAN: Yes, but I would just like to point out that I was criticising clause 7 of the draft Bill. Our contention was that no applicant should be allowed to defeat the local naturalization law by applying for the Imperial naturalization.

Mr. CHURCHILL: That was the intention, but the drafting is ambiguous, and I quite agree it is not at all satisfactory; so let us consider clause 7 as gone altogether.

Mr. MALAN: As the Home Secretary has stated now that twelve months at least he must be in the country in which he applies for Imperial naturalization that alters the situation very much indeed.

Sir JOHN SIMON: The last twelve months.

Mr. MALAN: The last twelve months; so that with the altered principle as expressed in what we have now—No. 3—as against what is contained in clause 7 of the draft Bill, I think there is very much to be said for it; personally I would like to say that as this is an important matter, if we could have a copy of those five or six principles, as expressed by the Home Secretary, before we come to a final decision, I should be pleased, because we have hitherto been going rather on the principles expressed in the draft Bill and they are very materially altered now in the memorandum read by the Home Secretary.

Dr. FINDLAY: I should like to say first one word here. It seems to me that the plan suggested by the Home Secretary involves a little needless duplication. It presupposes an application for Colonial naturalization first, and bases upon that a right to acquire Imperial naturalization. I think that might be avoided and the same purpose attained by there being passed an Imperial statute providing for Imperial naturalization, and providing that the powers given in that Imperial statute may be adopted by the self-governing oversea Dependencies, but that they should have power, however, in addition to that, to meet a difficulty which would arise, and that difficulty is this: it may well be that you will grant naturalization upon conditions less stringent than those prevailing in some oversea Dependencies. That is quite conceiveable. Possibly it is an existing fact. You would require, therefore, to provide that where an applicant for Imperial naturalization in, say, Canada, was going to acquire naturalization there by virtue of Imperial naturalization, the Canadian Government should have power to prescribe some further condition, some stricter condition, than that contained

in your Imperial statute. The converse of that is a provision that local Colonial naturalization may be given if the country desires to give naturalization upon conditions less stringent than those contained in the Imperial statute.

The situation then would be this: you pass a statute providing for Imperial naturalization which may or may not be adopted by the self-governing countries. That is the first stage. Secondly, they may adopt it and provide that any person applying for naturalization under it should comply with still stricter conditions than those contained in that statute, because you will observe that obtaining Imperial naturalization means obtaining naturalization in that particular country. Thirdly, they may enact that the present system, if it is better, should continue. Now, the difference between the course suggested and the one I am suggesting is this: You would in many cases avoid duplication altogether. The Imperial statute would be passed providing for Imperial naturalization. New Zealand, for instance, may be content to adopt the statute as it is without more ado, and without providing for any local naturalization at all. Canada may do the same You would then avoid the double system entirely. It may be Canada or New Zealand think the conditions are too stringent and it will continue its local system. It may be that Canada does not want a local system but wants to increase the stringency of the Imperial system, and it could do that by a separate statute. So you would unify the process, having but one process, and still preserve to each country the power of controlling this matter itself.

Mr. CHURCHILL: But the Mother Country has at present the most stringent law as far as the time limit is concerned. Our five years covers everybody.

Dr. FINDLAY: That may be so just now; but changes may take place in Australia, or elsewhere, increasing the stringency of your conditions. That is conceivable, and one must provide now for the future. The course I am advocating seems to me to avoid duplication—local naturalization first and afterwards Imperial naturalization. I should have thought there would be no difficulty in drafting the proposed Bill, for Imperial naturalization, leaving each country to adopt it or not as it pleased, leaving each country to ask for increased stringency if it pleased, and leaving each country to continue its present system if it pleased.

Mr. CHURCHILL: I think the method we are proposing would be very simple and fair. Take the case of Sir Wilfrid Laurier's 100,000 American citizens that have come into Canada this year; in the third year they would become Canadian citizens, but in the fifth year, if they wished, they could become Imperial citizens. There would be no difficulty, no extra inquiry, but simply an endorsement.

Dr. FINDLAY: That would, of course, be a matter of machinery, but we require a person to first apply for Colonial naturalization, and then by a separate process, which might be simple, to apply for Imperial naturalization. Why not unify the processes?

Mr. CHURCHILL: If he had all the qualifications there is no reason why he should not apply for the full Imperial naturalization if he had been there for five years.

Dr. FINDLAY: The Bill before us contemplates the two processes; first local, and then Imperial naturalization.

Sir WILFRID LAURIER: The suggestions of Mr. Churchill go very far towards remedying the condition of things which now exists, and which everybody admits is a source of danger, and which ought to be remedied in some way. His remedy is that any man who has obtained letters of naturalization in any of the Dominions may come here to England and obtain upon presentation of an application a further letter of naturalization which would make him an Imperial citizen.

Mr. CHURCHILL: He may obtain it in the Dominions.

The CHAIRMAN: He need not come here.

Sir WILFRID LAURIER: Very well: it may be obtained in the Dominions themselves. I hoped that the Imperial Government would have been able to go further, and to recognize the letter of naturalization which has been given as carrying its effect everywhere. That can be done, I think, with the diversity of legislation which exists to-day. In England you require a probation of five years. Very well, a man cannot obtain letters of naturalization unless he has been a resident in this country for five years. After that he can become a British subject. These are conditions which are applicable to the United Kingdom. In the case of Australia, the same man, if he is located in Australia and not in Great Britain, can have his letters of naturalization after a probation of two years. Can there be any reason at all, from a practical point of view, why this alien, who has become a British subject in Australia should not travel anywhere, and put his letter of naturalization in his pocket, and claim that he has the right of a British citizen, even if he comes to England. I see no objection. There may be objections, but I see them not. In the same way, suppose he goes to New Zealand? New Zealand is very careful also in the selection of its own citizens, but in New Zealand the main question which they have in mind when granting letters of naturalization is not the period of residence but the character of the man.

Sir JOSEPH WARD: And his education.

Sir WILFRID LAURIER: And his education. A man goes to New Zealand one day and applies for naturalization on the following day. They do not attach any importance to how

long he has been there, but they ask him what is his education, and what is his character, and they go carefully into it, and they come to the conclusion that he is a fit person to be a British subject. What objection is there, if that man comes to Great Britain to his being recognized as a British subject as well? I repeat what I said a moment ago, that I see no objection. There may be objections from the point of view of His Majesty's Government in Great Britain, and if there are we have to submit; but I think it would be far safer if you were to say that when a man has obtained his letters of naturalization in any of the Dominions he can put his certificate in his pocket and can travel all over the world and come to Great Britain and say: "I am a British subject." It would be much more simple, as everybody would admit, and unless there are very strong objections to the contrary, this would seem to me a far simpler solution of the whole problem. At present a man who obtains his letters of naturalization in Great Britain comes over to Canada or Australia, or anywhere else, and he is at once recognized as a British subject, and I would like to have the reverse position—that a man naturalized in the Dominions should also be recognized as a British subject. There are objections. One objection is perhaps the colour question. It is supposed that here you are perhaps more easy on the colour question than we would be in Canada, South Africa, or New Zealand. I, for my part, do not see any serious difficulty in that, because the colour question will never be a problem in this country. The men of the coloured races who would be naturalized in Great Britain would be of a higher education and of the higher class. You would not have in this country a rush of such immigration as we would have in Canada, Australia, and New Zealand, unless it is limited. That is really the true difficulty at the bottom of every mind there, that you may naturalize a class of subjects generally undesirable. This is a difficulty technically, but I do not think it is a difficulty practically, and therefore I would prefer, if His Majesty's Government are able to see their way to do so, our certificates to be accepted here and their certificates to be accepted in our countries.

Mr. MALAN: Would not you stipulate for a minimum of two years' residence?

Sir WILFRID LAURIER: I would not like to interfere with the freedom or the wisdom or the preference of any Dominion on this point. For my part, I am quite willing to accept in Canada every man naturalized in New Zealand, although there is no probation at all there in point of residence. If a man comes to Canada with a certificate issued in New Zealand, for my part I would at once pass legislation in Canada to accept this man as a British subject in Canada.

The CHAIRMAN: Would every Dominion be willing to accept the individuals naturalized by every other Dominion under laws on which they had not been consulted?

Sir WILFRID LAURIER: Let me say in answer to the objection raised by Mr. Malan that a man who had been rejected in one country might go somewhere else and there get naturalized, as has been pointed out by Mr. Churchill, this is a very remote contingency. It is a possibility.

Mr. MALAN: Under your system it would not arise at all, and under the revised scheme as laid down by Mr. Churchill now, the chances are very much less, but in the Bill as it was sent out to us, the man could get the Imperial naturalization in his own Dominion after he is refused naturalization by his local Government.

Sir WILFRID LAURIER: But even under those circumstances it would be easy for any Dominion to say that a man whose application had been rejected could not be recognized under any circumstances.

Sir JOSEPH WARD: I think one of the questions that might possibly be answered by Mr. Churchill is that suggestion made by Sir Wilfrid Laurier as to accepting a British naturalized subject everywhere, with the system that prevails in New Zealand of no limitation of time, with three years in Canada, and with two years in Australia, and so on; would that be acceptable to the Imperial Government in view of the fact that they have a five years' limitation?

Mr. CHURCHILL: No, it would not. There is a very strong feeling in this country that it ought not to be too easy for aliens to obtain naturalization, and that feeling will increase, I think, with the development of the pensions and the insurance schemes, which play such a large part now-a-days, and in which there is a distinct difference made between naturalized and non-naturalized people in this country, I think there would be a difficulty, and at any rate, we attach as much importance to our five years' limitation as any of the representatives of the self-governing Dominions attach to their various standards.

The CHAIRMAN: I think Sir Wilfrid Laurier rather suggested another method of treatment—that a naturalization in Canada after a period of three years should become automatically at the expiration of five years naturalization in the Empire as a whole. But there, again, there would be a difficulty, that if an American had resided three years in Canada and acquired his naturalization, the moment he had got that paper in his pocket he might return to the United States and remain there, and at the end of five years he would for his own purposes have become a British citizen.

Mr. CHURCHILL: No, it would not do.

The CHAIRMAN: That is how the automatic suggestion would work, because we would not be able to say to him: "You have not resided for five years in the British Empire," nor

should we be able to put to him the point: "Do you intend to reside in the British Empire in future?"

Sir JOSEPH WARD: That might be got over by a certificate that he had.

Mr. BATCHELOR: May I say on the point raised by Sir Wilfrid Laurier that, as far as Australia is concerned, I do not think we could agree to that because it would be giving each country legislative powers practically which would govern local naturalization. Take the case of New Zealand, they require no limitation at all as to residence. In Australia we require two years' probation. People could come after, say, getting a certificate from New Zealand to Australia, who had not completed anything like the two years we require, and, of course, under these circumstances, they would have advantages by going first to New Zealand which they would not have if they come direct to Australia. Under those circumstances it would be over-riding our conditions. It seems to me that the method which was suggested by Mr. Churchill, which I am very pleased to say was practically on the same lines as that which I suggested, gets over nearly all these difficulties, the only difference appearing to be on the question as to whether an Imperial Act is necessary, or whether we should set up some standard.

Sir JOSEPH WARD: I think an Imperial Act is absolutely necessary.

The CHAIRMAN: An Imperial adoptive Act.

Mr. BATCHELOR: I think so. Some kind of standard would have to be set up by some authority which each of the Dominions by legislation could adopt. Whether the standard is set up by Imperial Act or not is not material to the Dominions; it is not material to us, for instance. Probably the best way is to have an Imperial standard.

Mr. CHURCHILL: Of course, the five years includes everything; the greater includes the less, and it would bring us all together.

Mr. BATCHELOR: I do not think there are any conditions imposed by any of the States that are not also imposed by the United Kingdom, so that I see no difficulty at all. What each of the Dominions can do is to slightly alter their own legislation, giving power to adopt the Imperial Act or the Imperial standard, and it seems to me that that gets over all the difficulties which have been suggested.

Mr. CHURCHILL: We do not tie ourselves to any other condition at all except the five years. There are a great many differences as to how character is ascertained, the ability to speak English and so on. We do not trouble about that at all; all we say is: "The local certificate in a Dominion plus

five years' residence in the British Empire." It is very simple.

Sir WILFRID LAURIER: In the British Empire or in the United Kingdom?

Mr. CHURCHILL: In the British Empire, residence anywhere in the British Empire counting for the five years.

Sir JOHN SIMON: I should like to point out with reference to what Mr. Batchelor has just said, that from the Home country's point of view there is one reason why we must have an Imperial Act, and it is this. Under our existing law five years' residence in the British Empire does not help the applicant at all. Fifty years' residence in the British Empire does not help him. What he has to show is five years' residence in the United Kingdom and the intention to continue to reside in the United Kingdom, and, of course, that has got to be our law until we have altered it. Therefore we must have an Imperial Act from our point of view in order that we may do what we wish to do, recognize residence anywhere in the British Empire as just as good as residence in the United Kingdom.

That leads me to make this suggestion to Mr. Malan. He was raising this difficulty. He was saying that perhaps a man may have been objected to on good grounds in some portion of the Empire and then afterwards may apply to the Home Govenrment and attempt to get a certificate of naturalization here. May I just point out this? Before he could get a certificate of naturalization here he would have to show where his five years of residence has taken place, and in the case supposed he has resided in various parts of the Empire. I conceive it would not be a very difficult regulation to say that if a man came forward and said: "I make up part of my five years by saying that I have resided for two of them in South Africa," communication could take place in order that it might be possible to see whether South Africa knows anything about him. That would be a very possible regulation, and it is made possible because he has got to show where his five years have been made up. If he has done five years in the United Kingdom without a change, he naturally satisfies the Home authorities.

May I say also, Sir, that I appreciate very fully, and I have felt the difficulty myself to which Mr. Malan refers with regard to clause 7 of the Bill, and I am quite certain that that does not accurately represent the intentions of those who drafted it or the Home Government. It is essential to the scheme which the Home Secretary has referred to, that the grant of an Imperial certificate should be a matter of discretion and that that discretion should be exercised, not in all cases by the Home Government of course, but by the authority which has the local opportunity of judging of the man's personal qualities and credenitals during the last year of his five years. That seems to me to be essential to the scheme.

Mr. MALAN: That is not expressed in clause 7 at all.

Sir JOHN SIMON: I agree it is not, but I am confident it was what was really intended and it is made very plain by what Mr. Churchill has said.

"May I finally point out this? It is said very truly that there might be cases in which a man could get an Imperial certificate, although if he applied locally he might not be regarded, in some parts of the Empire, as qualified for a local certificate on the ground of colour and so on. What I suggest the Conference has to remember is that for every one man who is naturalized you have thousands of persons who are natural born British subjects. Of course our law is that anybody born in any part of the British Empire, whatever his parentage, is a natural born British subject for all purposes; and, as Mr. Harcourt was pointing out, whatever may happen in the case of a man of colour who in some corner of the Empire gets naturalization, he cannot be put in a better position than an exactly similar man who was born within the British Empire. The real safeguard which I suggest that the Dominions have is the power which they, of course, exercise freely as they think right of imposing the conditions which apply not only to aliens, but apply to British subjects, which must be satisfied before those persons in their own area exercise political or other rights. That seems to me really to show that the danger is exaggerated when the danger is referred to of the grant of naturalization in some other part of the Empire.

Mr. CHURCHILL: I think the Conference is perhaps ready to come to the conclusion on these points. I do not know, Sir Wilfrid, how far we meet your view?

Sir WILFRID LAURIER: They do go very far, but not quite as far as I would like. What I have in my mind is this—of course every one speaks for the country he represents here—the case which I put forward some time ago of the American citizen who has been three years in Canada and becomes a British subject in Canada, but is not a British subject in Great Britain. You would meet partially my views if you were to go further. I had hoped that the man who was a British subject in Canada would be a British subject in Great Britain. I had hoped you would go further than you are going, but if you are going to say that with two further years in Canada he would be a British subject——

Mr CHURCHILL: Yes.

Sir WILFRID LAURIER: I would accept that.

Sir JOHN SIMON: And granted by the Canadian Government.

Sir WILFRID LAURIER: Yes, that would carry the full British citizenship.

General Botha: I think we should accept Mr. Churchill's suggestion.

Sir Joseph Ward: I agree.

Mr. Churchill: May I ask the Conference, then, if they will allow me to have the bill redrafted at once on the lines of the principles which have been elucidated in the discussion, so that the Bill, or at any rate, the heads of the Bill[1] could be submitted to the representatives of the Dominions before they leave this country. I am not quite familiar with the actual procedure of the Conference, but I imagine that we could have a sitting in a fortnight or three weeks of one day when I could submit the draft Bill.

The Chairman: I am afraid that will not be possible.

Mr. Fisher: I should like to say, Mr. Harcourt, that I should hesitate to assent to a proposition of that kind—the examination of a Bill to be gone through. We shall do well if we confine ourselves to affirming propositions in well-defined language expressing our views here.

The Chairman: They must ultimately take the form of a Bill.

Sir Wilfrid Laurier: If you ask me, I say we are prepared to accept the proposal as far as Canada is concerned of adding another two years to the period of probation. If you could make it general and say that after continuous residence in any of the Dominions for five years——

Sir Joseph Ward: I was going to say the very same thing, that if the five years which is suggested as being the period for Canada, that is two years plus these local three years—if the proposal is made that it is to be after five years' residence in our countries, I see no objection to it at all.

Sir John Simon: That is a portion of the second proposition which Mr. Churchill read out, that five years anywhere in the Empire should be as good as five years in the United Kingdom.

Sir Joseph Ward: That is all right.

The Chairman: It may be three years in Canada and two years in New Zealand, and that would make five years for British naturalization.

Sir Wilfrid Laurier: But the probation should be in the country of naturalization. It would not be that the applicant should be three years in Canada and two years in Australia.

The Chairman: It would, for Great Britain; that is the change we propose to make. We should give him Imperial naturalization so long as he has resided five years in any one part or parts of the British Empire.

Sir Joseph Ward: There is one point I want to ask a question upon so as to make it quite clear. Supposing in the case

[1] *See* draft Bill in Volume of papers [Cd. 574-6-1].

of New Zealand, in connection with this second part of the proposal as to the five years, we required a man before we naturalized him to wait for five years, would this proposal mean that on his being naturalized he has to stay another five years before he gets it?

Sir JOHN SIMON: No, they overlap.

Sir JOSEPH WARD: It is residence only.

The CHAIRMAN: It is concurrent residence.

Dr. FINDLAY: We have no prescribed numbers of years. We ask how long he has been in New Zealand, and we may grant it without any period being prescribed. Will you ask as they do in Canada: "What period does your law provide?" and if the answer is "Two years," will you then say "You have to wait another three years and then you will have Imperial letters of naturalization"? We have no time prescribed, and we would like to know what evidence you would be content with.

Mr. FISHER: You could state in your certificate the time he had been there.

Sir JOSEPH WARD: I think our better way would be probably to put into one of our Acts a period of years, say a year or two, and that would get over it.

Mr. FISHER: Supposing you naturalized an applicant the next day, Sir Joseph, you could put down the time he had been in your country when you granted him naturalization?

Sir JOSEPH WARD: Yes, but I think the clearer and more handy way would be to put a period of a year or two into our own Act.

The CHAIRMAN: That would be an advantage in the way of similarity.

Sir WILFRID LAURIER: The idea is this, that after a man who has obtained letters of naturalization in any of the Dominions has five years' residence, under those letters of naturalization he is entitled to be a British subject anywhere in the Empire.

The CHAIRMAN: Yes, anywhere.

Sir WILFRID LAURIER: But if he has been three years in Canada I would not say that he should have Imperial letters of naturalization if he goes to reside elsewhere in the British Empire.

The CHAIRMAN: But that is for British purposes; we are to be satisfied with five years in any part of the Empire.

Mr. FISHER: If you would allow me to say so I am rather in a difficulty here. The suggestion now is that there must be five years after naturalization.

The CHAIRMAN: No.

Sir JOSEPH WARD: I shall make it clear by legislation if it is not so.

Mr. FISHER: You could put on to your dated naturalization certificate the length of time the applicant had been in New Zealand, and that would count prior to the granting of the certificate, and the subsequent period would make up the five years. I see no difficulty at all now.

The CHAIRMAN: They do not inquire in New Zealand as to his length of residence.

Mr. FISHER: In my own State of Queensland, a foreigner, as we call them, coming to that State could apply the day he landed to be naturalized, and then six months afterwards they would grant his naturalization.

Sir JOHN SIMON: Then he would want four years and six months more.

Sir JOSEPH WARD: It is only a matter of detail as to whether any of the Dominions remain without a fixed period of years or with a period of years. I believe, for the purpose of enabling us all to have a better understanding of what we are doing, it would be better if New Zealand fixed a term of a year or two as the case may be. We should not object to making it three years, the same as in Canada, because, as I have said, we keep some of our people out for more than twenty years. Although we have not a limit we do not allow them to get in in a hurry, they must have the proper qualifications.

I wanted to say this particularly, Mr. Churchill, that as far as I am concerned I would infinitely prefer to see your proposed Bill. I believe without our going in the direction of saying that we affirm everything in the Bill, if we had the suggested Bill of Mr. Churchill with amendments on the lines suggested this morning, we might perhaps by way of suggestion be of some service in arriving at what we could all generally agree to, because, after all, you have to remember that the Imperial Bill is not going to supersede our power to legislate locally. It is not to supersede our power to keep out the alien, and it is not to supersede our power to keep out the coloured man, so that we remain perfectly free, but I think it would be a valuable thing if we could see the proposed Bill, and it might save a lot of time in bringing the system into operation thoughout the Empire.

Mr. CHURCHILL: I will ask them to begin drafting it at once. May I propose then to the Conference this resolution which I will read and embodying the difficult points? "That the Conferences approves the scheme of Imperial citizenship based on the following five propositions: (1) Imperial nationality should be world-wide and uniform, each Dominion being left free to grant local nationality on such terms as its Legislature thinks fit. (2) The Mother Country finds it necessary to maintain five years as the qualifying period. This is a safeguard to the

Dominions as well as to us, but five years anywhere in the Empire should be as good as five years in the United Kingdom. (3) The grant of nationality is in every case discretionary and this discretion should be exercised by those responsible in the area in which the applicant has spent the last twelve months. (4) The Imperial Act would not apply to the self-governing Dominions until adopted by them. (5) Nothing now proposed would affect the validity and effectiveness of local laws regulating immigration and the like or differentiating between classes of British subjects."

Mr. BATCHELOR: Is there not one other thing you want there—I do not know that it is quite clearly enough expressed—that no Imperial naturalization would over-ride the local requirements?

Sir JOSEPH WARD: It cannot until it is adopted by the local Legislature.

Mr. BATCHELOR: I do not think you have that expressed at all—that no Imperial naturalization granted anywhere can give naturalization in cases where locally something else is required.

Sir JOHN SIMON: Take the case of a natural-born British subject who may, of course, be a person of colour, it may be that he cannot speak any European language—there are thousands and tens of thousands such—I suggest to you that he is a natural-born British subject whatever happens, but, of course, that does not in the least affect the legislative power of each and every Dominion either to exclude him or, if he comes inside the area of a Dominion, to deny him privileges which white people or persons speaking a European language enjoy. Surely his position internationally as a British subject of the King is beyond question.

Mr. BATCHELOR: I am not discussing that at all—that is not the point. The question is this: Supposing any one of the Dominions chooses to impose some kind of barrier on naturalization, this Imperial Act should not prevent them doing something.

Mr. CHURCHILL: Nothing would conflict with the local law.

Mr. BATCHELOR: That is not expressed in your five propositions.

Mr. CHURCHILL: You have a pretty good safeguard in practice. First of all, you have the fact that either the Mother Country or else one of the Dominions has thought the man a fitting and suitable subject. Then you have the five years which are in force in this country, which is a still greater security, and the special conditions which apply in this country, one of which is ability to read and write the English language.

Mr. BATCHELOR: Yours covers all our requirements, there is no doubt about it.

Mr. CHURCHILL: I do not think you need run any risk at all in practice. The only thing you need to say in the future,

supposing you wish to say it should be 10 years is: "We will not have anybody who has not been 10 years in the Colony."

Sir JOSEPH WARD: I am satisfied with the proposal, and I think it meets what Mr. Batchelor wants.

Mr. CHURCHILL: In any case nothing affects the autonomous power of the local Parliament. You could pass a law in which you could say: "The provisions of this Act must be in abeyance as respects Australia."

Mr. FISHER: Can an Act of the Imperial Parliament, except it specifically states that it does so, amend any of the legislation of the self-governing Dominions?

The CHAIRMAN: We discussed that before you came in.

Sir WILFRID LAURIER: It has been approved.

The CHAIRMAN: It was only proposed that the Imperial Act should be adoptive by the Dominions.

Mr. FISHER: That is quite true, but you say here—drafted by the legal hand, I presume—that it will not in any way affect the self-governing powers of the Dominions.

Sir JOSEPH WARD: It provides that unless we adopt that legislation it does not apply to us.

Mr. FISHER: Why is it necessary to say that?

Sir JOSEPH WARD: Because it could not have any effect unless we did.

Mr. FISHER: Why do you need to state that there? If you cannot do it, you cannot do it.

Dr. FINDLAY: It is still doubtful.

Mr. CHURCHILL: If Mr. Fisher would read the objections which South Africa took to the draft Bill, they took the constitutional ground, and these are more or less the principles which should guide us in preparing the Bill. It is not necessary to affirm it in law at all.

Mr. FISHER: You are to ask the Government in the Bill to declare that so and so is so and so.

Sir JOHN SIMON: Would it not meet your feeling if one said—I think exactly the same effect is produced if one laid down one of those propositions in this way: "That the scheme for Imperial naturalization would have no operative effect in any Dominion until the responsible Government and Legislature of that Dominion had adopted it as its own law." That is exactly the same thing.

The CHAIRMAN: This is not a declaration that we cannot legislate for a Dominion; it is merely a declaration that on this particular matter we do not propose to.

Mr. FISHER: It is for you to say. I feel, speaking for the Commonwealth of Australia, that there can be no attack on our

constitution unless it is specifically stated that you are attempting to amend it, and if you do, you will hear about it.

The CHAIRMAN: There is no admission on either side, Mr. Fisher.

Sir JOSEPH WARD: Under the Imperial Naturalization Act of 1870, which is in operation now, exactly the same position exists as that which you are referring to, and we are not bound by that.

Mr. FISHER: It is the statement of it that seems to me to be a redundancy.

Sir JOHN SIMON: It was intended rather as a protection against a possible misunderstanding.

Mr. CHURCHILL: I think it was really necessary to do it because of the objections that have been taken by the Government of South Africa; they raised the constitutional point very strongly and, therefore, in trying to arrive at a general basis of agreement this morning, we put that in in order that every one should feel that we are not trying in this instance to do anything of the sort.

Mr. FISHER: Theirs is the most recently prepared, and their constitution is all right.

Sir JOHN SIMON: Would it not put it in a way which is not capable of misconstruction, Mr. Fisher, if our fourth proposition ran: "The Imperial Act should be so framed as to enable each self-governing Dominion to adopt it"? The effect is exactly the same.

Mr. FISHER: These are much better words.

The CHAIRMAN: May I take it that we are agreed to these general propositions on which the Home Office and the Law Office will proceed to frame a Bill to be submitted and discussed at the earliest moment?

Mr. MALAN: We down here have heard it only once read, and I would like to hear it again.

Mr. CHURCHILL: "That this Conference approves the scheme of Imperial citizenship, based on the following five propositions." I will send to each member of the Conference a typescript of this, and perhaps that will be the better course.

The CHAIRMAN: But that will mean that we do not come to any decision on it now.

Mr. CHURCHILL: I will read it now, and send a copy this evening: "(1) Imperial nationality should be world-wide and uniform, each Dominion being left free to grant local nationality on such terms as its Legislature thinks fit. (2) The Mother Country finds it necessary to maintain five years as a qualifying period. This is a safeguard to the Dominions as

well as to us, but five years anywhere in the Empire should be as good as five years in the United Kingdom. (3) The grant of nationality is in every case discretionary and this discretion should be exercised by those responsible in the area in which the applicant has spent the last twelve months."

Mr. MALAN: That would apply to the Imperial nationality as well as to the local nationality. I think you had better make that clear.

Sir JOHN SIMON: We had better put in the word "Imperial."

Mr. CHURCHILL: Yes. "The grant of Imperial nationality."

Mr. MALAN: That is right.

Mr. CHURCHILL: "(4) The Imperial Act should be so framed as to enable each self-governing Dominion to adopt it. (5) Nothing now proposed" (this again is not necessary but only to make clear where we stand—it is only an *aide mémoire*) "would affect the validity and effectiveness of local law regulating immigration and the like or differentiating between the classes of British subjects."

The CHAIRMAN: I think we can probably agree to this as instructions for the drafting of a Bill.

Sir JOSEPH WARD: Yes, I think that is right.

General BOTHA: Yes.

Mr. BATCHELOR: I should like to say, as far as I can see, that I am not quite sure that all of those clauses are necessary, but I certainly agree with them all.

Sir JOHN SIMON: They are really your suggestions.

Mr. CHURCHILL: They are *aides memoire* for drafting the Bill.

Mr. BATCHELOR: I should like, personally, to express my pleasure that the Conference has come to a decision which, I think, will be very useful and have very good results.

The CHAIRMAN: I think we may have time, Sir Joseph, to deal with the uniformity of laws, which is next on the agenda. I take it that the three resolutions on naturalization which stand first are now withdrawn and this one substituted.

[AGREED.]

INDEX.